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# Governing Global Civil Society: The WTO, NGOs, and the Politics of Traditional Knowledge and Biodiversity

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A dissertation submitted to the University of Bristol in accordance with the  
requirements for award of the degree of PhD in Politics  
in the Faculty of Social Sciences and Law.

(78,301 words)

# Abstract

This thesis examines the relationship that is emerging between the World Trade Organisation (WTO) and what many international relations scholars refer to as 'global civil society'. It focuses on the interactions and dialogue that have taken place between the WTO and representatives of 'global civil society' around one particularly controversial and widely-debated set of issues: ongoing debates about the WTO's Trade Related Intellectual Property Agreement (TRIPS) and the protection of 'traditional knowledge' and 'biodiversity'. Drawing on governmentality theory and other elements of Foucauldian thought, the thesis examines the practices and processes that 'structure the possible field of action' (Foucault 1983: 221) of non-state actors who seek to feed into policy debates at the WTO, and the patterns of inclusion and exclusion that result from these. The empirical data underpinning the analysis has been generated in a number of geographical sites – Geneva, Switzerland and Lima, Cusco, Iquitos and Puno in Peru – using a 'multi-sited' ethnographic approach. The analysis developed throughout the thesis illuminates some of the processes of filtering and erasure that occur when differently situated civil society organisations attempt to contribute to the same policy debate. It also highlights the very different roles played by Northern and Southern civil society organisations in the governance of traditional knowledge and biodiversity. The thesis thereby opens up new lines of enquiry into the forms of restriction and control which operate in and through the social spaces in which civil society interacts with the WTO, and the implications of these for processes of participation and representation in global governance.





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## Author's Declaration

I declare that the work in this dissertation was carried out in accordance with the requirements of the University's Regulations and Code of Practice for Research Degree Programmes and that it has not been submitted for any other academic award. Except where indicated by specific reference in the text, the work is the candidate's own work. Work done in collaboration with, or with the assistance of, others, is indicated as such. Any views expressed in the dissertation are those of the author.

Signed: 

Date: 31<sup>st</sup> may 2012 .



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# List of Abbreviations

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ADPIC	Aspectos de los Derechos de Propiedad Intelectual relacionados con el Comercio (Trade-Related Intellectual Property Rights)
CAN	Comunidad Andina (Andean Community)
CBD	Convention on Biological Diversity
CIEL	Center for International Environmental Law
CSO	Civil Society Organisation
CUTS	Consumer Unity & Trust Society
FAO	Food and Agriculture Organisation
GATT	General Agreement on Tariffs and Trade
GCS	Global Civil Society
GI	Geographical Indication
ICTSD	International Centre for Trade and Sustainable Development
IGC	Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore
IGO	Intergovernmental Organisation
ILO	International Labour Office
INDECOPI	Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual (National Institute for the Defense of Competition and the Protection of Intellectual Property)
INDEPA	Instituto Nacional de Desarrollo de los Pueblos Indígenas, Amazónicos y Afroperuanos (National Institute for the Development of the Indigenous, Amazonian and Afroperuvian Peoples)
INGO	International Non-Governmental Organisation

IP	Intellectual Property
IPR	Intellectual Property Right
LDC	Least Developed Country
NGO	Non-Governmental Organisation
OMC	Organización Mundial de Comercio (World Trade Organisation)
OMPI	Organización Mundial de la Propiedad Intelectual (World Intellectual Property Organisation)
ONG	Organización No Gubernamental (Non-Governmental Organisation)
QUNO	Quaker United Nations Office
TLC	Tratado de Libre Comercio (Free Trade Agreement)
TRIPS	Trade-Related Intellectual Property Rights
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
WHO	World Health Organisation
WIPO	World Intellectual Property Organisation
WTO	World Trade Organisation



# Introduction

## Global Civil Society and the WTO

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This thesis examines the relationship that is emerging between the World Trade Organisation (WTO) and what many international relations scholars refer to as 'global civil society', 'transnational civil society' or simply 'civil society' (see e.g. Anheier et al 2001; Florini and Simmons 2000; Kaldor 2003a, 2003b; Keane 2003; Lipschutz 2005a, 2005b, 2007; Price 1998, 2003; Ramos 2006; Scholte 2002a, 2002b, 2004a, 2004b, 2007; Seckinelgin 2002). Unlike much of the existing literature on the WTO and global civil society, the analysis developed here does not focus explicitly on issues such as transparency, accountability and democratic legitimacy, or the ways in which these can be enhanced through the participation of civil society organisations in WTO processes (see e.g. Charnovitz 2003, 2005; Dunoff 1998, 2003; Smythe and Smith 2006). Neither does it seek to assess the quality of the relationship between civil society organisations and the WTO, or the extent to which WTO engagement with different kinds of civil society organisations is 'meaningful' (see e.g. Wilkinson 2002, 2005; Williams 2005). My focus, rather, is the way in which interactions between global civil society and the WTO are governed in the Foucauldian sense of the term. I examine the practices and processes that 'structure the possible field of action' (Foucault 1983: 221) of non-state actors who seek to feed into policy debates at the WTO, and the patterns of inclusion and exclusion that result from these. Debates about transparency, accountability and the extent to which interactions between civil society and the WTO are 'meaningful' (Wilkinson 2005: 26) form part of the backdrop to the arguments developed here, but the thesis opens up new lines of enquiry into the forms of restriction and control which operate in and through the social spaces in which civil society interacts with the WTO, and the implications of these for processes of participation and representation in global governance.

The thesis is part of an emerging literature on global civil society and its involvement in global governance which draws on Michel Foucault and others' work on governmentality (see e.g. Amoore and Langley 2004, 2005; Bryant 2002; Ilcan and Lacey 2006; Jaeger 2007; Lipschutz 2005a, 2005b, 2007; Lipschutz with Rowe 2005; Sending and Neumann 2006). Like this literature, I understand global civil society to be both produced by and (re-)productive of broader global power relations and disciplinary norms, and part of the structures and rationalities that govern global relations. Rather than conceptualising global civil society as a relatively autonomous 'sphere of ideas, values, institutions, organisations, networks, and individuals located *between* the family, the state, and the market and operating *beyond* the confines of national societies, polities and economies' (Anheier et al 2001: 17; see also Keane 2003: 8-11), global civil society is thus understood to be constitutive of global governance processes and structures. Unlike this emerging literature, however, this study proceeds from a self-consciously anthropological reading of governmentality theory, which emphasises the centrality of practice to processes of meaning creation and transmission (see e.g. Comaroff and Comaroff 1992: 38; Herbert 2000: 556; Larner and Walters 2004: 11). The term 'global civil society' is not understood to refer to any kind of natural, pre-determined reality or domain; the meaning of 'global civil society' is, rather, understood to be stabilised, negotiated and contested through regular everyday practice. This thesis seeks, then, to understand what kind of 'global civil society' is being called forward and constructed as legitimate in and through the interactions that take place between civil society organisations and the WTO – understood here to comprise the WTO Secretariat as well as the national delegates who carry out much of the organisation's business. It also seeks to understand the processes that lead to certain types of civil society representatives and their perspectives being constructed as legitimate and included in this 'global civil society', while others are constructed as illegitimate and excluded.

In order to facilitate the development of a detailed, empirically-grounded account of current civil society-WTO relations, this thesis focuses on the interactions and dialogue that have taken place around one particularly controversial and widely-debated set of issues relating to WTO policy: ongoing debates about the WTO's Trade Related Intellectual Property Agreement (TRIPS) and the protection of 'traditional knowledge' and 'biodiversity'. These TRIPS-traditional knowledge-biodiversity debates provide an enlightening focus not only because they have been approached from a variety of ideological and theoretical perspectives, which has led to much diversity of opinion within 'global civil society' about the nature of the problem that the TRIPS Agreement represents, but also because they have involved civil society organisations and governments around the world, particularly in countries such as India, China, Thailand,

Ecuador, Brazil and Peru which have high levels of biodiversity and significant indigenous populations, whose so-called 'traditional knowledge' is the focus of discussion (see e.g. GRAIN and Kalpavriksh 2002: 13-16; Halbert 2005: 163; May and Sell 2006: 195-197; Ragavan 2001: 54-57). Analysing the interactions and dialogue that have taken place between civil society organisations and WTO representatives (both Secretariat officials and national delegates who are responsible for negotiating and decision-making in the TRIPS Council) thus illuminates some of the filtering and translation processes that occur when differently situated civil society organisations attempt to contribute to the same policy debate. It also highlights the very different roles played by Northern and Southern civil society organisations in the governance of traditional knowledge and biodiversity.

The empirical data underpinning the analysis has been generated in a number of geographical sites - Geneva, Switzerland and Lima, Cusco, Iquitos and Puno in Peru – using a 'multi-sited' ethnographic approach (see e.g. Freidberg 2001; Garsten 2010; Hannerz 2003; Marcus 1995, 1998, 2010). Geneva is home to both the WTO Secretariat and scores of mainly international NGOs that seek to monitor and feed into the negotiations that take place there, as well as several other international organisations including the World Intellectual Property Organisation (WIPO), the World Health Organisation (WHO), the International Labour Office (ILO) and several United Nations specialist agencies. Geneva is thus the geographical location where most interaction takes place between representatives of the WTO and 'global civil society', mostly in the shape of the more or less professionalised NGOs and thinktanks that have established offices there. Peru is one of the most bio-diverse countries in the world, and is among the seventeen countries recognised by the Convention on Biological Diversity (CBD) and Conservation International as 'mega-diverse' because of the range and diversity of plant and animal life that naturally occur there.<sup>1</sup> It also has a large indigenous population (around 45% of the population according to Minority Rights Group International) who live predominantly in the Andean and Amazonian regions of the country,<sup>2</sup> whose so-called 'traditional knowledge' of the ecosystems in these regions is considered valuable to Western business and science. Both the Peruvian government and organisations and associations which make up Peruvian 'civil society', including professionalised NGOs, semi-governmental research institutes, peasant associations and indigenous associations, have been particularly active and interested in debates around trade policy, intellectual property policy and the protection of traditional knowledge and

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<sup>1</sup> See Conservation International (1998), 'Megadiversity: The 17 Biodiversity Superstars', details available on-line: <http://www.conservation.org/documentaries/Pages/megadiversity.aspx>, and Convention on Biological Diversity (no date), 'Country Profile – Peru', available on-line: <http://www.cbd.int/countries/profile.shtml?country=pe#status>.

<sup>2</sup> See Minority Rights Group International (2007), 'World Directory of Minorities and Indigenous Peoples - Peru: Overview', available on-line: <http://www.unhcr.org/refworld/docid/4954ce0b2.html>.

biodiversity. The Peruvian government has, for example, made securing more effective legal recognition and protection of 'traditional knowledge' one of its foreign policy objectives. Peruvian civil society organisations have also made it as far as Geneva either to participate in TRIPS Council meetings or sessions of WIPO's Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC)<sup>3</sup> in their attempts to monitor and participate in international debates on intellectual property policy, traditional knowledge and biodiversity.

In total, I spent five months conducting research in Geneva, from July to December 2008, as well as a number of shorter research visits timed to coincide with relevant workshops and seminars taking place there between 2007 and 2010. I also spent a total of five months carrying out research in Peru, from February to June 2009, and again from March to April 2010. During this time, I carried out over 70 in-depth, unstructured interviews, with WTO Secretariat officials, developed and developing country delegates to the WTO, and representatives of NGOs and thinktanks in Geneva, government officials in Lima and Iquitos, and representatives of NGOs, sustainable development organisations and indigenous associations in Lima, Iquitos, Cusco and Puno.<sup>4</sup> I also attended and participated in a variety of relevant public or semi-public events, including the annual WTO Public Forums in Geneva from 2007 to 2010, an International Workshop on Genetically Modified Organisms and Biopiracy in Cusco, Peru in April 2009, and the IV Continental Summit of Indigenous Peoples and Nationalities of Abya Yala in Puno, Peru in May 2009.<sup>5</sup> The data generated through interviewing and participant observation has been supplemented wherever possible with documentary material, such as position papers submitted to the WTO's TRIPS Council, NGO publications and website contents.

## Situating The Analysis: Legal and Historical Context

This study of the relationship between 'global civil society' and the WTO has been carried out a decade after the so-called 'Battle of Seattle' in 1999 which prompted re-

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<sup>3</sup> The IGC was established in 2000 in order to develop an international legal agreement to protect traditional knowledge and traditional cultural expressions, and has been holding bi-annual meetings since then (for details, see: <http://www.wipo.int/tk/en/igc/index.html>). WIPO, unlike the WTO, accredits and funds the participation in these meetings of civil society organisations from around the world.

<sup>4</sup> Interviews in Geneva were carried out in English, and interviews in Peru were carried out in Spanish. Research participants are cited in this thesis in the language in which the interview was conducted, and a translation is provided wherever necessary. It should be noted that many interviews, including with indigenous leaders in Peru, were conducted in a language that was not the interviewees' first language, and that the structures and vocabularies used by interviewees do not always conform to 'international' norms but follow local usage and patterns.

<sup>5</sup> See Appendix 1 for full details of the organisations where interviews were carried out and Appendix 2 for details of the events attended.

assessment within the WTO about the organisation's mode of relating to the outside world. The large-scale street protests that accompanied the Seattle Ministerial Conference, and the broader public criticism of WTO policies that emerged at that time, took many in the WTO by surprise, and led to something of a re-think about the need to be more transparent about the organisation's activities and to engage more with civil society. A range of measures were adopted to increase the flow of information between the WTO, civil society and the general public, and to generate opportunities for interaction and dialogue between WTO representatives and members of civil society. These measures, along with the communicative spaces they have opened up, have now become a regular, routinised part of the WTO's activities, and particular patterns of civil society-WTO interaction have emerged within them.

Formally, however, nothing has changed since 1996, when the WTO General Council, the WTO's highest decision-making body, approved a set of guidelines which laid out the types of interaction and dialogue that should take place between the WTO and civil society. The legal basis for the WTO's interactions with civil society thus still derives from the Marrakesh Agreement which established the WTO, signed by member governments in 1994. Article V:2 of the Marrakesh Agreement provided the WTO General Council with the authority to 'make appropriate arrangements for consultation and cooperation with non-governmental organizations concerned with matters related to those of the WTO.' The guidelines approved by the General Council in June 1996 retain the focus on 'consultation and cooperation', but provide more details about the rationale and anticipated benefits of increased civil society-WTO contact by framing it as an opportunity to 'increase the awareness of the public in respect of WTO activities' (WT/L/162, II) and thereby 'contribute to the accuracy and richness of the public debate' (WT/L/162, IV). The guidelines also set out a number of ways in which the WTO Secretariat and WTO members will take steps to 'improve transparency and develop communication with NGOs' (WT/L/162, II). These include measures such as derestricting WTO documents, publishing these documents on-line, and making efforts to initiate contact with the NGOs, for example through organising ad hoc 'symposia on specific WTO-related issues' and 'responding to requests for general information and briefings about the WTO' by the Secretariat (WT/L/162, III and IV). The guidelines are clear, however, that primary responsibility for consulting and taking civil society views into consideration lies at the national level (WT/L/162, VI), and that NGOs should not be 'directly involved in the work of the WTO or its meetings' (WT/L/162, VI; see also Williams 2005: 36).

Although these guidelines were approved in 1996, both the WTO Secretariat and national delegates remained, on the whole, relatively indifferent to the activities of civil

society, and slow to initiate or engage in interaction and dialogue, both before and after the events in Seattle in 1999. According to an interviewee in the Information and External Relations Division in the WTO Secretariat, the division responsible for channelling the organisation's interactions with civil society, 'it took them [staff in other divisions of the Secretariat] a while to figure out that actually we don't work with aliens, we don't work with people from another planet'. Many Secretariat officials understood their role to consist of providing support to national governments in their pursuit of trade liberalisation, and simply did not see civil society as relevant.<sup>6</sup> National delegates, meanwhile, particularly those from developing countries with little history of positive relations between government officials and 'civil society', were often suspicious about increasing the amount and level of contact with NGOs, particularly as the most visible NGOs were European or North American and known for criticising these same governments for their environmental or human rights records (see e.g. WTO 2007: 334). Events in Seattle acted as something of a catalyst to change, however, by making visible to Secretariat staff and delegates the level of public interest in the WTO's activities, and the types of concerns and criticisms of the organisation that were prevalent at the time, including issues relating to labour standards, the environment, unequal North-South relations within the WTO, the spread of corporate globalisation, and the lack of transparency in the way that business is conducted in the WTO (see e.g. Bhagwati 2001: 19-20; Gill 2000: 134-135; Halliday 2000: 124; Kaldor 2000: 112; Levi and Murphy 2006: 651; McMichael 2000: 466; Williams 2005: 40-42). In response to calls for greater transparency (WTO 2007: 335), but also to the perception that much of the opposition to the WTO was based on incorrect or incomplete information (interviews with Secretariat staff), the Secretariat and national delegates started to place more emphasis on opening up channels of communication and information, as set out in the 1996 guidelines. Efforts focused primarily on improving access to information about trade negotiations and other WTO activities, as the Secretariat started to develop the WTO website and publish information about the WTO's activities, and members agreed to derestrict some WTO documents and to publish draft negotiating texts on the WTO website.

Recent years have seen a further evolution in the WTO's relationship with civil society. Although the Secretariat are still working within (and according to some accounts constrained by) the 1996 General Council-approved guidelines, communication and interactions between the different elements of the WTO and global civil society are no longer simply premised on improving transparency and access to information. According to an interviewee in the WTO Secretariat, 'it started off being about transparency, now it's gone beyond transparency, now it's a real dialogue'. Geneva-

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<sup>6</sup> This view is still prevalent amongst some national delegates and Secretariat staff. See Chapter 4 for details.

based NGOs in particular are developing ever closer relations with national delegations based on providing particular expertise and support in preparing negotiating positions and arguments, and NGOs are increasingly credited with providing Members with useful technical and political advice (see WTO 2007: 340-341; Lamy 2007). According to the authors of the WTO-published *World Trade Report 2007*, '[f]rom a sensitive, one-dimensional and mostly process-oriented relationship which primarily evolved around access to information, the WTO-NGO interaction has matured into a more substance-based one' (WTO 2007: 342; see also Wilkinson 2005: 27). It is in this context that the present study has been carried out; there is a widespread expectation that interactions between representatives of 'civil society' and the WTO should be 'substance-based', and significant levels of trust have built up between at least some sections of 'global civil society' and the WTO, despite the lack of legal status afforded to NGOs and other civil society organisations by WTO Agreements and guidelines.

## Overview of the Thesis

In Chapter One, I review the existing literature on the role played by 'civil society' in global governance, including accounts which take 'global social movements', 'transnational advocacy networks', 'NGOs' and '(global) civil society' as their objects of analysis. I identify a number of dominant narrative tropes and analytical conventions in this literature that limit scholarly understanding of the complex roles that different types of civil society organisations play in global governance. Existing accounts of the role played by NGOs and other types of civil society organisation in global governance tend, I argue, to: (1) research and present conclusions about the role played by 'NGOs', 'transnational social movements' and other constructed objects of analysis as if these were *homogenous units*, thus masking important differences and tensions that exist within them; (2) focus on the ways in which NGOs and civil society more broadly can *enhance global democracy*, without considering the ways in which they might also impede it; and (3) focus on analysing the *impact* and *influence* of 'global civil society' without considering the power dynamics, exclusionary processes and politics of knowledge and representation that can operate within it. The existing literature on the role played by 'civil society' in global governance thus over-emphasises the uniformity and consensual nature of 'global civil society', and renders certain modes of civil society relationship to global governance structures and processes more visible than others.

In Chapter Two, I develop an alternative approach to studying the role of 'civil society' in global governance which avoids reproducing some of the more problematic assumptions, misrepresentations and erasures that are present in the existing literature.

This approach enables exploration of the ways in which the power dynamics, exclusionary processes and politics of representation that can operate within 'global civil society' impact on the way it relates to global governance. I draw on two main theoretical sources: governmentality theory, particularly practice-oriented readings of it, and ethnographic research methodology as developed and applied by cultural and social anthropologists. From the governmentality literature, I borrow a number of general orienting assumptions, including the understanding of governing as consisting of 'modes of action, more or less considered and calculated, which [are] destined to act upon the possibilities of action of other people' (Foucault 1983: 221), and the understanding that domains of activity such as 'global civil society' and 'global governance' are not natural or pre-given, but constituted and negotiated through everyday practice. I also borrow a number of more specific concepts and conceptualisations, including the notion that processes of governing always rely on and reproduce particular forms of thought and rationality, and the idea that subjectivity can act as a terrain of government. From the anthropological literature I borrow a number of orienting methodological principles, including the adoption of what scholars have referred to as an 'ethnographic sensibility' that is sensitive to the ways in which meaning is generated and negotiated in social interaction, and seeks to capture the inherent complexity and diversity of the social world (see e.g. Marcus 1998: 14; Schatz 2009: 5; Wedeen 2009: 90). I also borrow the 'multi-sited' approach to collecting and generating research data developed and applied by a number of cultural and social anthropologists (see e.g. Freidberg 2001; Garsten 2010; Hannerz 2003; Marcus 1995, 1998, 2010). This theoretical and methodological approach facilitates an examination of the relationship emerging between the WTO and civil society that is sensitive to the differences and tensions that exist between the different organisations understood to be part of 'global civil society', and that helps explore what makes some parts of this 'global civil society' more visible, influential and thus more involved in this field of global governance than others.

In Chapter Three, I turn my attention to the debates that have been taking place over the past fifteen years about the relationship and tensions between the WTO's TRIPS Agreement and the protection of traditional knowledge and biodiversity. I begin by presenting an overview of the TRIPS Agreement and the philosophical principles and assumptions that underpin it, then outline the context in which concerns about the links between TRIPS, traditional knowledge and biodiversity first began to emerge. I then outline the debates and discussions that have been taking place within the WTO on what have come to be known as the 'TRIPS-CBD issues', and identify the main positions and perspectives that have been developed and presented in the TRIPS Council, the WTO body charged with overseeing the implementation of the TRIPS Agreement and negotiating any potential modifications to it. I then, by way of contrast, outline the discussions that have been taking place around the world on TRIPS-traditional



knowledge-biodiversity issues, which include several strands of thought and discussion that challenge many of the assumptions underpinning the debates that have taken place in the TRIPS Council. The chapter thus serves as an orientation and contextualisation of the three more analytical chapters that follow it. I return to these debates and the ways in which the issues discussed in Chapters Four, Five and Six limit what is sayable and whose perspectives are considered legitimate in the field of civil society-WTO interactions in Chapter Seven.

In Chapter Four, I focus on the forms of knowledge of 'global civil society' that have emerged within the WTO in the past decade, along with ideas about the kind of relationship 'global civil society' is able to have with the WTO. I identify four basic discourses that permeate the practices and narratives of those within the WTO (both Secretariat staff and national delegates) who define and/or enact the WTO's policy towards civil society: the discourse of 'civil society can contribute'; the discourse of 'civil society must be informed'; the discourse of 'civil society is confusing'; and the discourse of 'civil society is not that relevant'. These discourses not only shape WTO representatives' responses to civil society organisations but also structure the possibilities of action of civil society organisations that wish to interact with representatives of the WTO. They generate, I argue, a particular regime of visibility and invisibility which renders certain kinds of civil society organisations and certain kinds of perspectives and knowledges more visible and legitimate than others. Visibility and legitimacy are gained, I suggest, through maintaining a permanent physical presence in Geneva, contributing what is recognised as technical expertise and using trade-appropriate vocabularies and frameworks. Organisations outside Geneva and/or whose contributions to debates are grounded in other types of knowledge and framed using other vocabularies are rendered invisible and excluded from participation.

In Chapter Five, I focus on the forms of restriction and control that operate in the field of civil society-WTO interactions, and the forms of and opportunities for resistance associated with them. I use the concept of governmental technologies (understood as strategies or mechanisms that manipulate and shape a field of activity) to identify a number of mechanisms of control that work across the various spaces and contexts in which interaction takes place between civil society and the WTO, and keep behaviour and interventions within acceptable, non-challenging limits. I identify and discuss four technologies of government: (1) the will to inform which constructs civil society-WTO interactions as neutral exchanges of information; (2) the technology of responsabilisation which seeks to create an active, self-regulating, participatory civil society that is itself responsible for ensuring the quality of the civil society-WTO relationship; (3) the logic of competition which places civil society organisations in competition for space and

attention from WTO representatives; and (4) the use of trust as a technology of government in order to keep civil society activities within acceptable limits. These technologies of government create a space in which civil society actors who wish to participate in dialogue and interaction with WTO representatives are required to present their interventions as information exchange, take responsibility for providing the type of information that national delegates to the WTO find relevant, compete with other civil society actors for space and attention, and behave in a way which causes no embarrassment or disturbance to the WTO and its regular activities.

In Chapter Six, I turn my attention to the processes of subjectification that operate within the field of civil society-WTO interactions, and to the forms of subjectivity that are treated and incited as appropriate and legitimate. I identify three mechanisms of subjectification that work to encourage particular forms of subjectivity: (1) the normalisation of certain roles, behaviours and practices through repeated interactions and the emergence of expectations about what constitutes appropriate behaviour; (2) decisions taken by the WTO Secretariat about which civil society organisations to invite to meetings and events, which grant space and access to those who embody acceptable and desirable forms of subjectivity; and (3) what I call 'disciplinary communicative norms', which oblige would-be participants in interaction and communication to adopt certain modes and styles of communication. I then focus on the forms of subjectivity that these processes promote, identifying six legitimate or desirable subject positions: 'the aide', 'the technical expert', 'the anonymous contributor', 'the pragmatist', 'the non-challenging interlocutor', and 'the responsible member of the trade community'. These subject positions represent, I argue, the contours and boundaries of acceptable subjectivity in the field of activity in which interaction takes place between representatives of civil society and the WTO. Individuals and organisations that embody different forms of subjectivity are, like those whose contributions to debates are grounded in alternative forms of knowledge, excluded from participation.

In Chapter Seven, I draw out some of the implications of the analysis presented in the previous three chapters, by examining the ways in which the discourses identified in Chapter Four, the governmental techniques and technologies discussed in Chapter Five, and the forms of legitimate subjectivity examined in Chapter Six combine to rarefy or narrow debates over TRIPS, traditional knowledge and biodiversity. I identify three types of 'rarefaction' (Foucault 1981: 56-67): rarefaction of meaning in terms of what is considered part of the debate on TRIPS, traditional knowledge and biodiversity; rarefaction of the perspectives and frameworks within which contributions to the debate can be made; and rarefaction of the legitimate speaking and knowing subjects in this debate. Indigenous associations and indigenous perspectives, along with other

more critical perspectives and epistemologies, are, I argue, erased and excluded in this field of global governance. The analysis developed throughout the thesis thus provides support for more critical perspectives on 'global civil society' which see it as shaped by and (re-)productive of particular global power relations and forms of domination.

In the concluding chapter, I explore some of the broader implications of the analysis and arguments developed throughout the thesis. I comment on the ways in which the possibilities of action of '(global) civil society' are being structured in the field of civil society-WTO interactions, and on the role played by certain NGOs in governing the possibilities of participation of other parts of '(global) civil society'. I also suggest a number of avenues for future research based on the analysis developed.

# Chapter One

## Researching the Role of Civil Society in Global Governance: Existing Approaches and Dilemmas

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Scholarly interest in the role played by NGOs and other types of civil society actor in global governance has grown significantly over the past two decades, as NGOs have become increasingly recognised actors in global politics, and as global governance and its implicit multi-actor focus has become an increasingly accepted framework for examining global patterns of rule. Accounts charting the development and impact of particular NGOs, 'coalitions', 'networks' and 'social movements' have been accompanied by increasingly sophisticated attempts to theorise what the presence and visibility of these organisations and groupings mean for contemporary global governance, and to specify the ways in which NGOs connect and relate to broader global governance processes. While earlier contributions to these debates tended to focus on making a case for taking NGOs and other non-state actors seriously as part of a changing landscape in global politics (e.g. Colás 2002: 1; Price 1998: 613), recent analyses and accounts are more varied, and also more ambitious and more specific in the conclusions they draw about the significance and role of NGOs in global governance. NGOs and the 'global civil society' they are typically assumed to be part of have thus been analysed and depicted as everything from agents in the construction of global social contracts between citizens, states and international organisations (He and Murphy 2007), to 'an expression of a changing logic or rationality of government' at the global level (Sending and Neumann 2006: 652), to 'a basis for sustaining the dominance of a narrow band of humanity' in global society (Pasha and Blaney 1998: 419). There now exists a sizeable

and varied body of literature, diverse in its conceptual vocabularies and its theoretical assumptions, which in one way or other attempts to identify, analyse and theorise the ways in which NGOs and other types of civil society organisation are implicated in present-day global governance.

In this chapter, I present an overview of the accounts and conceptualisations of the role played by NGOs and other so-called civil society organisations in global governance that have emerged in the field of international relations in the past fifteen years, and discuss the ways in which scholars have tended to frame and carry out their enquiries. Although these accounts and conceptualisations draw on a range of theoretical resources, including social movement theory, governmentality theory, Gramscian approaches to power and resistance, and theories of cosmopolitan and/or deliberative democracy, which give rise to important differences and tensions within this literature, there are, I suggest, a number of narrative tropes and analytical conventions that are deployed and reproduced across the different strands of the literature. As Timothy Mitchell has put it, '[f]ields of analysis often develop a convention for introducing their object. Such tropes come to seem too obvious and straightforward to question' (Mitchell 2002: 210). These narrative tropes and analytical conventions render, I argue, certain types of civil society actor and certain modes of relationship to global governance structures and processes more visible than others, whilst obscuring issues such as the power relations and hierarchies of knowledge that operate within the field of activity conventionally referred to as 'global civil society'. These tropes and conventions not only contribute, therefore, to a broader regime of truth about the role of civil society in global governance which over-emphasises the uniformity and consensual nature of 'global civil society', but they also limit scholarly understanding of the role played by civil society in global governance in potentially problematic ways.

The chapter is organised as follows. I begin with an overview of the different ways in which scholars interested in the role played by civil society in global governance have conceptualised and constructed their objects of analysis, and identify the most important differences and tensions between the different approaches. I then identify and discuss a number of assumptions, conventions and narrative tropes commonly used to frame accounts of the role played by NGOs and other types of civil society organisation in global governance that are prevalent across the different strands of research and theorising. I focus on three broad areas of concern: (1) the tendency to research and frame accounts of the role played by 'NGOs', 'transnational social movements' and other constructed objects of analysis as *homogenous units*, thus masking important differences within these categories and analytical constructions; (2) the tendency to focus on the ways in which NGOs and civil society more broadly can

*enhance global democracy*, without considering the ways in which they might also impede it; and (3) the analytical focus on explaining the *impact* and *influence* of NGOs which obscures themes such as the power dynamics, exclusionary processes and politics of representation that can operate within 'global civil society'.<sup>7</sup> I conclude this chapter with a summary of the ways in which these conventions limit understanding of the role played by civil society in global governance, and some reflections on the kind of research that could help overcome these biases and limitations.

## Framing the Object of Analysis: Transnational Social Movements, Transnational Advocacy Networks, NGOs and (Global) Civil Society

Scholars interested in the role played by civil society in global governance have approached the topic from a diverse range of theoretical perspectives. Researchers working in Marxist and Gramscian traditions, for example, have analysed and/or developed theories about the relationship between global power or global governance and global resistance (e.g. Cox 1999; Gill 2003; Ramos 2006; Rupert 2003). Others have applied concepts and models from social movement theory to analyse the emergence of transnational social movements and the political opportunity structures which allow them to influence and interact with institutions of global governance (e.g. della Porta and Tarrow 2005; Klotz 2002; Reimann 2006; Smith 2002; Tarrow 2001, 2002, 2005). Another significant strand of research and theorising has drawn on governmentality theory to conceptualise global civil society and/or the actors taken to operate within it as themselves constitutive of global governance and the particular mentalities of government it relies on to function (e.g. Amoore and Langley 2004, 2005; Bryant 2002; Ilcan and Lacey 2006; Jaeger 2007; Lipschutz 2005a, 2005b, 2007; Lipschutz with Rowe 2005; Sending and Neumann 2006). Others have addressed and interrogated the topic through the lens of concepts such as a 'public sphere' (Nanz and Steffek 2004) or a 'transnational public sphere' (Eckersley 2007), a 'global public domain' (Nelson and Dorsey 2007; Ruggie 2004) and 'transnational associational life' (Pasha and Blaney 1998).

The concepts and categories that researchers have used to construct their object(s) of analysis are similarly diverse. Terms such as 'global', 'transnational' or 'international social movements', 'transnational advocacy networks', 'NGOs' or 'international NGOs'

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<sup>7</sup> For the purposes of this chapter, which focuses specifically on the role of 'civil society' in global governance, I do not unpack the different meanings and connotations of the term 'global governance', although there is certainly an equally detailed and important discussion to be had about these.

(INGOs) and 'global', 'transnational' or 'international civil society' are all commonly used to describe and delineate who or what is being examined. Less frequently used terms include 'NGO coalitions' (Yanacopulos 2005b); civil society organisations (CSOs) (Steffek and Ferreti 2009) and 'global knowledge networks' (Stone 2002). Although scholars offer a variety of arguments about how their chosen terminology differs from other key concepts, or about why their preferred concept best reflects the phenomenon they study, the choice of terminology is connected more, I suggest, to the political and ontological commitments of the researcher or research community that has developed around a particular term than it is to the inherent characteristics of the groups and organisations they refer to. 'Transnational social movements', 'transnational advocacy networks', 'NGOs', 'global/transnational/international civil society' as well as the less frequently used terms such as 'CSOs' and 'coalitions' are all constructed objects; they are ways of dividing up and classifying the social world that reflect and reproduce particular assumptions about the nature of the activity or social field they are describing.

Many researchers, particularly those who draw significantly on social movement theory as well as others who wish to emphasise that they are interested in non-elite groupings and purportedly mass mobilisation, use terms such as 'global', 'transnational' or 'international' 'social movements' to delineate their objects of study (e.g. Colás 2002; Dodgson 2000; O'Brien et al 2000; Olesen 2005; Smith 2002). The particular adjective applied – 'global', 'transnational' or 'international' – makes little difference in overall meaning, it seems; all are used to emphasise that the social movements in question operate in some way beyond national borders. According to Robert O'Brien and his co-authors:

Social movements are a subset of the numerous actors operating in the realm of civil society. They are groups of people with a common interest who band together to pursue a far reaching transformation of society ... [and] are working to forward priorities at odds with the existing organisation of the system.

(O'Brien et al 2000: 12)

Social movements are thus presented as bringing together the more contestational and radical elements in civil society, whose activities and objectives run counter to existing ordering arrangements. Global/transnational/international social movements, are, furthermore, understood to comprise groups of people who organise, operate or seek to bring about change on an international or global level, and who perceive and identify with struggles framed in international or global terms (see for example Colás 2002: 76, O'Brien et al 2000: 13). They are, for Kristen Magis, 'the most complex organisational form' observable in civil society, 'incorporating all that networks and coalitions do as

well as building shared ideologies and long-term strategies for action and providing mutual support' (2010: 319).

Another large group of scholars uses the term 'transnational advocacy network' to define and delimit their object of analysis (e.g. Asal, Nussbaum and Harrington 2007; Carpenter 2007a, 2007b; Hertel 2006; Jordan and van Tuijl 2000; Keck and Sikkink 1998). Transnational advocacy networks are understood to be composed of organisations and individuals such as research and advocacy organisations, trade unions, intellectuals and members of national governments and international organisations, who coordinate their work across and beyond borders to promote particular issues or norms. They are, according to Margaret Keck and Kathryn Sikkink, 'bound together by shared values, a common discourse, and dense exchanges of information and services' (1998: 2), and 'often involve individuals advocating policy changes that cannot be easily linked to a rationalist understanding of their "interests"' (*ibid.*: 8-9). Transnational advocacy networks are not, scholars insist, 'alternatives to social movements or INGOs; on the contrary, they can contain them – in the loose way that networks can contain anything' (Tarrow 2001: 13) (note the tension between this and the definition of social movements offered by Magis mentioned above). Transnational advocacy networks can, according to those who use the term, incorporate local, national and also regional social movements, and offer a way for the voices of these non-elite groupings to reach targets such as governments, corporations or international organisations more successfully. They are also seen as a way to amplify support for local social movements, through mobilising resources and generating moral pressure from international allies (Keck and Sikkink 1998: x).

Other analysts of the role played by civil society in global governance prefer to use the term 'NGOs' to refer to and construct their object of analysis (e.g. Albin 1999; Beyer 2007; Broome 2009; Gordenker and Weiss 1995; Reimann 2006; Reinalda 2001; Sending and Neumann 2006; Steele and Amoureux 2005). Many of these scholars use the term 'NGO' as a broad umbrella term, intended to encompass all types of organisations that are non-governmental in nature, i.e. which are ostensibly independent from state structures and control. Others use the term in a more specific sense: Jan Aart Scholte, for example, describes NGOs as 'formally organised, officially registered and professionally administered' organisations, with a stable bureaucracy and professionalised approach to their work (2002a: 284). Other analysts find the term 'NGO' too broad and encompassing to be meaningful, and add prefixes to further specify the kind of organisation examined. The term INGO (international non-governmental organisation) is now relatively commonly used to refer to a particular subset of the more general category NGO (see for example Anheier, Glasius and Kaldor 2001; Cooley and



Ron 2002; Florini and Simmons 2000; Colás 2002). Other scholars have employed terms like transnational NGO (Collingwood 2006), NGDO (nongovernmental development organisation) (Townsend et al 2002), ENGO (environmental NGO) (Mason 2004), GONGO (government-organised NGO) (Gordenker and Weiss 1995: 360), and DONGO (donor-organised nongovernmental organisation) (*ibid.*: 361) to refer to other specific 'mutant types' (*ibid.*: 361) of NGO.<sup>8</sup>

These accounts have been accompanied, nevertheless, by more critical contributions that draw attention to the ambiguities inherent in the term 'NGO', and the confusion that can be generated by using it as an analytical category. Kerstin Martens, for example, has called for greater specification and care when applying and defining the term: 'despite the increasing interest and the growing literature on the issue,' she argues, 'NGOs have not yet sufficiently been defined' (2002: 272). Norbert Götz, similarly, has argued that 'NGOs, despite the increasing attention directed to them in the past decade, are not yet adequately recognised or understood' (2008: 233). He attributes the popularity of the term to the fact that 'IR scholars have simply submitted to the worldview of governments and diplomats', which casts everything which is not governmental as non-governmental and therefore less legitimate in the world of international diplomacy (*ibid.*: 248).

The final cluster of terms which are commonly used to conceptualise and delineate non-state actors and their activities in global governance are those which include the concept 'civil society'. Some scholars use the term on its own (see e.g. Ramos 2006; Scholte 2002a, 2002b, 2004a, 2004b, 2007; Seckinelgin 2002). Others add the prefix 'global' (e.g. Anheier et al 2001; Kaldor 2003a, 2003b; Keane 2003, Lipschutz 2005a, 2005b, 2007), 'international' (e.g. Colás 2002) or 'transnational' (e.g. Florini and Simmons 2000; Price 1998, 2003). As with the terms 'global', 'international' or 'transnational' 'social movements', there is little inherent difference of meaning between these terms. Richard Price's definition of 'transnational civil society' as a 'set of interactions among an imagined community to shape collective life that are not confined to the territorial and institutional spaces of states' (1998: 615) is, for example, very similar to Helmut Anheier and his co-authors' definition of 'global civil society' as a 'sphere of ideas, values, institutions, organisations, networks, and individuals located *between* the family, the state, and the market and operating *beyond* the confines of national societies, politics and economies' (2001: 17). Some researchers use versions of the term 'civil society' in

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<sup>8</sup> Norbert Götz lists, only partly tongue-in-cheek it seems, a total of twenty sub-categories of the broader category NGO in use in the literature, including the 'GRINGO, the government regulated/run and initiated NGO', the 'CONGO (co-opted NGO)', and the 'Development Justice and Advocacy NGO (DJANGO)' (2008: 232-3).

combination with other concepts such as those discussed above to conceptualise the sphere or field of activity in which these objects of analysis operate. Thus for Alejandro Colás, for example, 'international civil society' is the sphere inhabited by 'international social movements', and for Amitai Etzioni, 'global civil society' is made up of 'three elements', namely 'INGOs', 'informal transnational networks', and 'social movements' (2004: 341-342).

There are, however, notable differences in the way in which scholars conceptualise (global/international/transnational) civil society, and the ways in which it relates and connects to global governance. There are differences, for example, in the level of independent agency attributed to actors taken to represent this field of activity. Some scholars conceptualise (global/international/transnational) civil society as a sphere of activity characterised by a high degree of independent agency. According to Scholte, for example, '[c]ivil society exists whenever and wherever voluntary associations – of whatever kind – try deliberately to mould certain governing rules of society' (2002b: 146). Civil society activity can be defined, he continues, as 'conscious attempts to shape policies, norms and structures in society at large' (*ibid.*: 147). Civil society is thus conceptualised as a sphere of deliberate, conscious activity, which is ostensibly unrestrained by broader social structures or social forces. Other analysts, however, conceptualise (global/international/transnational) civil society as a domain of activity which is strongly shaped by and ultimately dependent on broader social structures. According to Colás, for instance, 'agents of international civil society are implicated in almost equal measure with both the reproduction and transformation of the social structures that make up the international system' (2002: 83).

There are also related differences in the extent to which (global/international/transnational) civil society is conceptualised as a distinct and independent field of activity in global order, with its own social structures, norms and interests, and sources and forms of power. Liberal accounts typically conceive of global civil society as a relatively autonomous sphere, which operates in parallel to the state and state system, and can act as an oppositional force or counter-weight to them. John Keane, for example, defines global civil society as 'a form of society' with '*a marked life or momentum or power of its own*' (2003: 10-11, emphasis added). It is comprised, for him, of a series of 'non-governmental structures and activities' (*ibid.*: 8), including profit-seeking businesses, not-for-profit non-governmental organisations, social movements and linguistic communities, think-tanks, campaigning and lobby groups (*ibid.*: 8-9), which are connected together through a series of 'social relations that *stretch across and underneath state boundaries and other governmental forms*' (*ibid.*: 17, emphasis added). Such a conceptualisation leads many scholars to posit global civil society as a site of

oppositional politics in global governance, a so-called 'third force' alongside states and business (e.g. Florini and Simmons 2000), that can act, as Keane puts it, as 'a brake or potential check upon various forms of government' (2003: 15). Governmentality scholars, in contrast, conceptualise global civil society as an integral part of global systems of power and rule. Rather than constituting an autonomous oppositional force in global governance, global civil society is understood to be both produced by and (re)productive of global power relations and disciplinary norms. According to Ronnie Lipschutz:

GCS [global civil society] ought not to be seen as a realm of autonomous actors outside of the state, whose members are engaged in efforts to reform, re-regulate, and repoliticise economic activities. Rather, GCS is complicit in the reproduction of those very structures and relations that generate their activities in the first place.

(2005a: 55)

In contrast to accounts which treat civil society as somehow outside of or parallel to global order, governmentality scholars posit the involvement of global civil society in global governance as 'an expression of a changing logic or rationality of government (defined as a type of power) by which civil society is redefined from a passive object of government to be acted upon and into an entity that is both an object *and* a subject of government' (Sending and Neumann 2006: 652). For governmentality scholars, global civil society, along with forms of rationality that assign it a role in global governance, is thus itself *constitutive of global governance*: it is part of the structures and rationalities that govern global relations. It thus makes no sense, it is argued, to attempt to discern the impact or influence of global civil society on global governance, as global civil society is already fully internalised within and constitutive of global governance processes and structures.

As with the term 'NGOs', the use of the category '(global/international/transnational) civil society' to delineate and conceptualise an object of analysis is not without its critics. Even advocates of 'global civil society' (see e.g. Anheier et al 2001) recognise that the concept is 'fuzzy' and 'contested' (*ibid.*: 11), and difficult to define. Jens Bartelson has argued that we now find ourselves in 'a situation in which no one seems to know exactly *what* global civil society is, only *that* it is', a state of affairs he describes as 'puzzling given the apparent mismatch between the statist associations of the concept and its central role in globalist rhetoric' (2006: 372). 'Global civil society seems to have been studied into existence', he continues, 'by scholars who self-consciously have blended analytical and normative concerns in order to justify *their* particular vision of a global community' (*ibid.*: 374). Barrie Axford has developed a different critique of the concept, focusing on the 'sleight of hand through which GCS is revealed as the boundary-less

equivalent of civil society, but with all the normative and aesthetic baggage of the latter still attached' (2004: 251). He argues that using the term to frame accounts and enquiries 'is detrimental to a critical study of globalisation and, more important, to understanding the structural and systemic features of global systems' (*ibid.*: 250). Nevertheless, variations on the term 'civil society' remain a central, almost taken-for-granted, element in accounts and conceptualisations of the role played by NGOs and other types of non-governmental actors in present-day global governance, a situation which, given the current popularity of these terms, seems unlikely to change.

## The Tendency to Homogenise

I now turn my attention to the first of three broad areas of concern that can be observed across this varied literature: the tendency towards researching and framing accounts of the role played by 'NGOs', 'transnational social movements', 'transnational advocacy networks', '(global) civil society' and other constructed objects of analysis as if these were *homogenous units* composed of *homogenous global actors*. Scholars generally conceptualise these different analytical categories as inherently heterogeneous and diverse, and, in many cases, recognise that tensions, conflicts and struggles can emerge both within and between them (see e.g. Edwards 2001: 6; Florini 2000: 233; Keane 2003: 29; Rupert 2003: 194; Scholte 2000: 119; Sending and Neumann 2006: 659). Nevertheless, research and analysis have tended to be carried out in ways that mask such diversity and struggles. Most analytical attention has focused on identifying the cumulative impact of particular 'transnational advocacy networks' and 'transnational social movements, or the cumulative significance of 'global civil society' and the increasing prominence of 'NGOs'. Far less attention has been devoted to exploring how different parts of these constructed objects of analysis might be implicated in different ways or to different degrees in global governance, or how struggles between different elements and perspectives within such objects of analysis might also be relevant. The unhelpful and inaccurate impression emerges that the field of activity typically referred to as 'global civil society' is homogenous and one-dimensional, and that differences and struggles within it are not relevant to an analysis of its role in global governance.

Thus scholars writing about '(global) civil society', despite conceptualising 'global civil society' as a diverse, multi-dimensional field of activity, in which diverse, multi-form actors interact and pursue their agendas, tend not to analyse how this inherent diversity plays out when they theorise the role played by civil society in global governance (see e.g. Etzioni 2004; Kaldor 2003b; Scholte 2002a, 2002b, 2004a, 2004b, 2007). Scholte, for example, in a chapter on the role of civil society in global governance, identifies

nineteen different kinds of actor that he considers to be part of (global) civil society, including academic institutions, consumer advocates, environmental movements, ethnic lobbies, faith-based associations, human rights promoters, labour unions, local community groups, peace movements, professional bodies, relief organisations, and think tanks (2002b: 146). He also argues that these different kinds of actor can usefully be divided into three groups, which he terms 'conformists', 'reformists' and 'transformists' (*ibid.*: 148), depending on their approach to globalisation and global governance. His conclusions about the type of impact civil society has in global governance, however, relate only to civil society in its entirety, and do not even entertain the possibility that these different types of organisations might be implicated in global governance in different ways and to different extents. The only distinctions he does make relate to different elements of global governance – 'discourse, institutional processes, policy content, and social structure' (*ibid.*: 153) – where civil society influence is argued to take place. 'Global governance' is thus to some extent differentiated and disaggregated in this account, yet 'global civil society' is not. In another chapter on the relationship between civil society and the WTO (2004a), Scholte does at least build a version of his three-fold distinction – this time using the terms 'conformers', 'reformers' and 'rejectionists' – into his analysis of the channels available for civil society organisations to interact with the WTO (2004a: 150). Numerous questions, however, remain unanswered, such as whether the type of resources, both financial and intellectual, that an organisation has at its disposal has an effect on its ability to interact with the WTO, whether there is any difference between the space made available for academic institutions, for instance, and for local community groups, and whether physical presence in Geneva is a prerequisite for interaction. Scholte's analysis may well be helpful when trying, as many of the earlier contributions to these debates tended to do, to make a case for taking civil society seriously as an agent in global governance, but it does little to help understand the ways in which different types of civil society organisation may be implicated in global governance in different ways.

This tendency to draw conclusions about the role of civil society in global governance without disaggregating or exploring the ways in which different elements within it might be involved in different ways is also evident in some of the more critical literature on 'global civil society'. Ronnie Lipschutz, for example, writing from a governmentality perspective, explicitly recognises that 'global civil society' has 'many variants and alternatives' (2005b: 768). Yet in his book on the ways in which global civil society is both produced by and productive of global power relations (Lipschutz with Rowe 2005), he tends to present and discuss his ideas about 'global civil society' in a similarly homogenising manner. He tends, for example, to draw and present conclusions about 'global civil society' as if it were one unit, or as if the only features worth mentioning applied to 'global civil society' in its entirety. He argues that 'global civil society (GCS) is

almost fully internalised within the system of governmentality that constitutes and subjectifies it, yet which GCS presumes to contest, regulate, and modify through its projects' (*ibid.*: 15), thus positioning 'global civil society' as one homogenous component in one homogenous system of global rule. Later on in the book, he further elaborates on his understanding of this 'system of governmentality', arguing that '[w]e live, today, in a complex and world-girdling system of global governmentality, one whose centre is almost impossible to pinpoint – there is no "there" there – and there is no single place – or even places – that can be identified as the originary source of contemporary global rule' (*ibid.*: 196). Although this global governmentality is recognised as complex and lacking an obvious centre, it is also, like the 'global civil society' it produces, conceptualised as *one* unit,<sup>9</sup> thus reinforcing the impression that 'global civil society' is *one* space or phenomenon, *one* object of analysis. Presenting 'global civil society' in this way, as a single object with a single set of characteristics and features, a correlative of a single system of global governmentality, generates the unhelpful impression that there exists one unitary 'global civil society' with a unity of interest, identity and function. It disregards the possibility that governmentality as it plays out at the global level may consist of numerous overlapping and competing logics, and underplays the extent to which global logics may be re-interpreted, translated or contested in local contexts by local 'civil societies'.

This tendency towards homogenisation in the literature on '(global) civil society' has been highlighted and problematised by a number of scholars, most notably by scholars working from a so-called 'post-colonial' perspective, but also by others using a governmentality approach. Paula Chakravartty, for example, warns against assuming that the features of 'civil society' are uniform across the world, arguing that 'civil society is not a homogenous bounded category easily translated across politically and historically distinct contexts' (2007: 298). Neera Chandhoke raises a number of questions intended to provoke re-examination of the homogenising assumptions underpinning some of the liberal accounts of 'global civil society':

Do ... global civil society actors actually represent people, particularly of the Third World? ... Do these more often than not well-funded and often well-organised civil society actors actually speak from below? Or do they claim to do so in order to gain legitimacy? ... Whatever happens to people who do not know any language that may have resonance in the world of international politics?

(2002: 47)

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<sup>9</sup> It should be noted that not all scholars who use the term 'global governmentality' understand it in this way. Wendy Larner and William Walters (2004), for example, use the term to refer to systems, in the plural, of governmentality that operate beyond and across states.

Louise Amoore and Paul Langley also seek to prompt reflection on what might be hidden or unexplored in accounts which portray 'global civil society' as cohesive and homogenous, arguing that 'the assumption of GCS [global civil society] as a cohesive and empowered agent masks the contradictions of people's feelings of shared experience, personal wellbeing and perceptions of risk and reward' (2004: 106).

A similar tendency towards homogenisation is also evident in the literature on 'transnational advocacy networks' and 'transnational/global/international social movements'. Like scholars of '(global) civil society', those who study 'transnational advocacy' and these different types of 'social movements' typically conceptualise their objects of analysis as comprising a multitude of different types of actors and organisations, and encompassing diverse interests, demands and perspectives. O'Brien and his co-authors, for example, are careful to highlight the differences and tensions that can exist within what they call 'global social movements' and the different manifestations of these 'movements' as they emerge in different settings. As they put it, '[b]ecause there is no single world state and no single world community, GSMs [global social movements] are less cohesive than their national counterparts. A GSM's local characteristics and interests may clash with other local manifestations of the movement' (2000: 13). They also stress the need for researchers to be sensitive to the differences and tensions that the concept of 'global social movement' might mask. 'Analysts of GSMs', they argue, 'must be particularly aware of making broad statements that assume an identity of interests or purposes between elements of the movement located in different parts of the world' (*ibid.*: 14). Keck and Sikkink, similarly, recognise the diversity of interests and voices that may be present in what they call 'transnational advocacy networks', and acknowledge that a network will not necessarily be able to successfully represent all the interests and voices within it. As they put it:

Transnational networks multiply the voices that are heard in international and domestic politics. These voices argue, persuade, strategise, document, lobby, pressure, and complain. The multiplication of voices is imperfect and selective – *for every voice that is amplified, many others are ignored* – but in a world where the voices of states have predominated, networks open channels for bringing alternative visions and information into international debate.

(1998: x, emphasis added)

Michael Edwards is more explicit about the types of questions that are worth asking in order to capture the diversity and tensions that may be present in such networks: 'Who speaks for whom in a global network? How are differences resolved when participants vary in strength and resources? ... [H]ow are grassroots voices mediated by institutions of different kinds – networks and their members, Northern NGOs and Southern NGOs, Southern NGOs and community groups?' (2001: 6). Transnational advocacy networks

and so-called global social movements are thus both conceptualised as diverse, potentially conflictual in their internal relations, and not necessarily cohesive in their perspectives and interests.

Nevertheless, empirical studies of 'transnational advocacy networks', 'global social movements' and the particular 'campaigns' they have been involved in tend not to explore these kinds of tensions, nor do they examine whose interests and perspectives come to dominate and be taken as representative of the network or movement as a whole. Rather than examining whose interests or perspectives benefit most from global social movement activity, or exploring why it is that certain voices are silenced or excluded within transnational advocacy networks while others are amplified, scholars have been far more interested in analysing the aggregate impact or influence of these networks and movements. Thus Richard Dodgson, for example, in his study of 'the Women's Health Movement (WHM)' and their opposition to 'manifestations of neoliberal globalisation in the UN's policies on sustainable development and population control' (Dodgson 2000: 443) recognises that 'the global scope of the WHM means that differences inevitably do exist' within the movement (*ibid.*: 447), yet only analyses and draws conclusions about the movement as a whole. He focuses his attention, for example, on the ways in which '[n]eoliberal globalisation has influenced the WHM's emergence and development as a GSM' (*ibid.*: 448); how 'the WHM begins its attack upon neoliberal globalisation' (*ibid.*: 450); the 'second strategy of the WHM' (*ibid.*: 455) and the 'third strategy of the WHM' (*ibid.*: 456). At no point does he analyse how the differences within the movement play out when it came, for instance, to selecting these different strategies and courses of action; the only relevant unit of analysis for him, in short, is the 'Women's Health Movement' in its entirety.

A similar or related argument can be made about the work of a number of other scholars. Price, for example, in his examination of 'the campaign to generate an international norm prohibiting antipersonnel (AP) landmines' (1998: 613), focuses on how the movement as a whole generated awareness of issues surrounding the use of antipersonnel landmines (*ibid.*: 627), through 'documenting the problem of AP land mines' in the 1980s and 1990s (*ibid.*: 621), and encouraging those with 'dissenting' opinions within the military to make their concerns public (*ibid.*: 633). He concludes that this 'transnational campaign has challenged and transformed the balance between civil society and the state in the constitution of security' (*ibid.*: 638). His entire analysis thus seeks to determine how this 'transnational campaign' in its entirety has had an impact on the use of antipersonnel landmines and on the constellation of actors involved in determining security policy. He is not interested in any of the internal dynamics and conflicts that must have existed within the campaign; his analysis thus generates the



impression that the transnational campaign was a homogenous movement, which exerted an impact on international security in a straightforward and linear way. Even O'Brien and his co-authors, despite explicitly warning researchers not to 'assume an identity of interests' between the different elements that make up a 'global social movement' (2000: 14), base their analysis and conclusions about the impact of different 'global social movements' on the World Bank, International Monetary Fund and WTO on the activities of just one sub-set of actors within these movements, i.e. international NGOs. They are thus unable to explore the sources or consequences of possible tensions that might exist between different types of organisation in different parts of the world, and despite their warnings, leave their readers with the impression that these movements are homogenous in their actions and the perspectives they represent.

This tendency to analyse and draw conclusions about the significance of civil society actors in global governance in homogenising, non-disaggregated ways is also present in the literature on 'NGOs'. As mentioned earlier, researchers generally recognise that the category 'NGO' is very broad and refers to a diverse range of organisations, to the extent that scholars have identified more than twenty sub-categories of NGO in order to be able to better specify what they wish to refer to (Götz 2008: 232-3). Nevertheless, unless analysts are specifically interested in one of these sub-categories of NGO (e.g. Mason 2004; Townsend et al 2002), they tend to refer and draw conclusions about 'NGOs' (and sometimes 'INGOs') as a group. Thus Leon Gordenker and Thomas Weiss, for example, although acknowledging that NGOs are a diverse and heterogeneous group (1995: 384), present their arguments and conclusions about 'NGOs' as if they were a uniform category of analysis. 'NGOs have now become a visible part of the process of setting agendas for cooperation', they argue (*ibid.*: 358); 'NGOs employ a variety of devices to increase the persuasiveness and efficiency of their work in conjunction with IGOs' (*ibid.*: 366); and '[w]e are at an early stage in understanding how NGOs adapt to changing external and internal environments' (*ibid.*: 361). Cornelia Beyer, similarly, takes and presents 'NGOs' as her ostensibly uniform unit of analysis. 'Through providing information and knowledge to ... [international] organization[s], NGOs contribute to cognitive change', she states (Beyer 2007: 515); similarly, 'NGOs have also come under criticism because it is not clear whom they represent' (Beyer 2007: 530; see also Broome 2009; Jordan and van Tuijl 2000; Matthews 2007). Once again, the desire to draw and present conclusions about 'NGOs' as an overall category creates an unhelpfully homogenising effect, in which the important differences and potential tensions between different types or organisation are obscured and made to seem irrelevant.

It should be noted, of course, that not all the accounts of the role played by civil society in global governance follow and reproduce the homogenising analytical conventions just

described. There are scholars who explicitly examine, for example, the relationship between Northern and Southern organisations in transnational networks (e.g. Doherty 2006), who investigate 'how inequities between the global North and South affect TSMO [transnational social movement organisation] solidarity' (Smith 2002: 505), and who carry out empirical research that allows them to address the concerns raised by Edwards (2001: 6) about the ways in which the interests of Southern or grassroots organisations come to be represented in transnational networks (see e.g. Hertel 2006, Townsend et al 2002). There are others who, because of their empirical material, have been prompted to analyse how certain perspectives have come to dominate particular civil society 'campaigns' (Brassett 2009), and others who have sought to develop models to explain how certain issues and perspectives can come to dominate within transnational advocacy networks (Carpenter 2007a; 2007b). There have also been attempts to reconceptualise categories such as 'global civil society' so as to open up more analytical space in which to examine the differences and conflicts that exist within it. According to James Brassett and William Smith, for example, '[g]lobal civil society should ... be defined not only as a deliberative agent, but also as an *affective arena*, a space for critical reflection and affective expression'. This would allow scholars 'to focus on the critical and ethical content of deliberation that takes place within global civil society, revealing the differences, dilemmas, ambiguities and contests that pervade its discourses about global governance' (2010: 414). Nevertheless, such accounts and attempts to conceptualise 'global civil society' in a less homogenising way are outnumbered by those which focus on the impact or significance of '(global) civil society', 'NGOs' and particular 'transnational advocacy networks' or 'social movements' *at an aggregate level*, and which fail to analyse the ways in which tensions, differences and power relations internal to these constructed objects play out in global governance.

## The Focus on Democratising Potential

A second set of issues relate to another dominant analytical convention in this literature, namely the tendency to frame analyses and conclusions about the significance of civil society in global governance in terms of the contribution made to global democracy. Scholars, particularly those working within traditions that draw on liberal political theory, have defined, presented and analysed civil society organisations as actors who work in the 'public interest' (Price 2003: 580), who perform various types of democratising function in global governance (Scholte 2004b), and who are creating a 'public sphere' in which 'to act as a discursive interface between international organisations and a global citizenry' (Nanz and Steffek 2004: 315). Alongside such analytical framings, a common narrative trope can also be identified in much of the (particularly liberal) literature, in which civil society actors are cast as fundamentally virtuous actors who are able to counter-balance the self-interested and immoral

behaviour of states and business to bring about fairer and more democratic global governance (e.g. Florini and Simmons 2000; Kaldor 2003a, 2003b; Keck and Sikkink 1998; Willetts 1996). As Brett Bowden has argued:

For some, the emergence of global civil society [is] ... some sort of panacea for all of humanity's woes. Global civil society is promoted as the vehicle by which democratic and humanitarian values, human rights, ecological sustainability, economic development, gender and labour divisions, and various other concerns might be addressed and remedied.

(2006: 157)

This type of analytical and narrative framing positions NGOs and other members of civil society carriers of democratic values by definition, and implies that their participation in global governance has a democratising function, or at the very least should be judged and evaluated in democratising terms.

The assumption that civil society is a carrier of values and activities that can enhance global democracy is often built into the definitions that scholars provide of the actors and groupings they take as their object of analysis. Price, for example, defines 'transnational civil society' as composed of 'self-organised advocacy groups that undertake voluntary collective action across state borders in pursuit of what they deem the *wider public interest*' (Price 2003: 580, emphasis added). This formulation at least leaves space for such groups' understanding of the 'wider public interest' to not be universally shared, but nevertheless suggests that the 'pursuit of ... the wider public interest' is what motivates all civil society actors. Ann Florini and P. Simmons, similarly, identify shared values as one of the defining features of 'transnational civil society networks': such networks 'tend to aim', they suggest, 'for broader goals based on their conception of what constitutes the *public good*'. They are bound together more by *shared values* than by self-interest' (2000: 7, emphasis added; see also Keck and Sikkink 1998: 2). Keane, in his definition of 'global civil society', casts NGOs and other civil society organisations as actors who 'tend to pluralise power and to problematise violence; consequently, their peaceful or 'civil' effects are felt everywhere, here and there, far and wide, to and from local areas, through wider regions, to the planetary level itself' (2003: 8). 'Global civil society' is thus associated with non-violence and pluralistic power relations, and presented as capable of transmitting these values around the world, thus civilising and democratising global politics.

More important, however, is the tendency, in evidence across the different strands of the liberal literature, to analyse and present conclusions about the significance of '(global) civil society' and the actors that populate it in ways which emphasise its

inherently democratising potential. The presence of 'NGOs' in global governance has been analysed and portrayed, for instance, as contributing to a pluralising of the voices and perspectives that are heard in global governance. Gordenker and Weiss, for example, argue that NGOs have:

injected unexpected voices into international discourse about numerous problems of global scope. Especially during the last 20 years, human rights advocates, gender activists, developmentalists, groups of indigenous peoples and representatives of other defined interests have become active in political work once reserved for states.

(1996: 17)

Lisa Jordan and Peter van Tuijl similarly argue that NGOs play a significant role in 'democratising power relations' through 'reveal[ing] truths that are not liked by vested interests and power holders' (2000: 2053). The involvement of '(global) civil society' in global governance has also been analysed in terms of its contribution to the accountability and legitimacy of global governance institutions. Scholte, for example, suggests that 'civil society associations do indeed offer significant possibilities to increase democratic accountability in global regulatory arrangements' (2004b: 213), through improving the 'transparency' (*ibid.*: 217), the capacity for 'policy monitoring and review' (*ibid.*: 219), and the possibilities for 'pursuit of redress' (*ibid.*: 220) associated with particular global governance institutions and structures. Patrizia Nanz and Jens Steffek, similarly, have argued that 'actors from organised civil society play an important role in the creation of a public sphere', as they have:

the potential to act as a discursive interface between international organisations and a global citizenry. Their role is to monitor policy-making in these institutions, to bring citizens' concerns into their deliberations and to empower marginalised groups so that they too may participate effectively in global politics.

(2004: 315)

These scholars do acknowledge that '(global) civil society' might not fully achieve the democratising functions associated with it, or that trends can emerge within '(global) civil society' which lead to certain perspectives becoming more dominant than others (Nanz and Steffek 2004: 332). Scholte, in the article just mentioned, explicitly states that not 'all civil society activities inherently and automatically enhance democratic accountability in global regimes' (2004b: 213), and elsewhere recognises that 'the democratic benefits of civil society engagement of global governance do not flow automatically: they must be actively nurtured' (2002a: 281). Nevertheless, these democratising functions and potential are what are interpreted and presented as most significant about civil society activities. The capacity of civil society to democratise global governance is, in other words, treated as the most relevant axis of analysis. What

this analytical convention does, moreover, in combination with the broader narrative trope that casts civil society involvement in global governance as a counter-balance to the activities of self-interested states and business, is remove several important considerations from view. It obscures, for example, the ways in which '(global) civil society' actors may narrow rather than pluralise global governance debates, and the ways in '(global) civil society' is itself both invested by and part of broader power relations. It also, as Gideon Baker has argued, leads to 'a blind spot' in many analyses of 'global civil society', which fail to examine 'the potentially deleterious effects of this on the right of equal sovereignty *between states*' (2002: 937, italics in original).

Scholars working from governmentality, 'post-colonial' and other critical perspectives have also challenged the assumption that '(global) civil society' and the activities understood to take place within it are automatic carriers of democratic values and democratising potential. Mustapha Kamal Pasha and David Blaney, for example, have pointed out that what they call 'transnational associational life', although 'a site of possible challenges to the oligarchical organisation of contemporary global political economy ... also appears as a basis for sustaining the dominance of a narrow band of humanity', through 'enacting the "global" values of North American and European activists' (1998: 419). Other scholars have questioned the extent to which 'global civil society' should be understood as somehow outside of or separate from the power relations and hierarchies that permeate global society. Chakravartty, for example, has argued that 'civil society as the associational aspect of society cannot be conceptualised as free from or abstracted from power relationships' (2007: 298). Chandhoke, similarly, has suggested that, 'whereas we can with some legitimacy conceptualise civil society as a site where people associate in ways that are distinct from the way they associate in the economy or in the political sphere, we can hardly assume that civil society is either emancipated or abstracted from the ethos that permeates these two spheres' (2001: 8). Others have posited a rather different role for 'global civil society' in global affairs. Rather than containing the potential to democratise global governance, 'global civil society' should be understood, according to Amoores and Langley, as 'a means of making the global political economy governable in particular ways' (2004: 90). Sangeeta Kamat, similarly, argues that 'the agentic role prescribed to NGOs is not an innocent one but one that foretells a reworking of democracy in ways that coalesce with global capitalist interests' (2004: 156). These more critical voices and perspectives are by no means as dominant, however, as the trope of virtuous, principled NGO actors in global governance or the analytical focus on democratising potential discussed above.

## The Focus on Identifying and Explaining Influence

A third set of issues relate to another analytical convention in the varied literature on the role of civil society in global governance, namely a tendency to define and analyse the significance of civil society organisations in terms of the 'influence' or 'impact' they have on global society as a whole, or on other specified actors within it. This tendency is particularly notable in accounts which take 'transnational advocacy networks', 'global/international/transnational social movements' and 'NGO coalitions' as their object of analysis (e.g. Colás 2002; Keck and Sikkink 1998; Olesen 2005; Yanacopulos 2005b), but is also present throughout the literature more broadly (e.g. Broome 2009; Greenwood 2003; Joachim 2003; Karns and Mingst 2004; Reinalda 2001; Willetts 1996; Williams 2005). Sometimes this emphasis on 'influence' and 'impact' is part of a conscious attempt to clear conceptual and analytical space in which to focus on NGOs and other civil society actors in a discipline which has traditionally focused on states and/or markets (see e.g. Broome 2009: 59; Colás 2002: 1; Eschle 2005: 17; Reinalda 2001: 15; Reinalda et al 2001: 3; True and Mintrom 2001: 28). At other times, however, the focus on 'influence' and 'impact' is part of an underlying web of assumptions about what NGOs do and why they are relevant to the study of global governance (see e.g. Greenwood 2003: 27; Karns and Mingst 2004: 241; Williams 2005: 38). Irrespective of scholars' intentions (or lack thereof), the overall image that emerges is that 'global civil society' is a sphere of activity defined by the influence it can exert over states, corporations and international organisations, and is worthy of attention only to the extent to which it produces identifiable change in global politics.

As with the focus on democratising potential, the assumption that what matters about NGOs, 'transnational advocacy networks' and '(global) civil society' is the 'influence' and 'impact' they try to exert is often present in the definitions that scholars offer of these objects of analysis. Peter Willetts, for example, when discussing how best to define the organisations that contributors to his edited volume examine, points out that '[t]here is no standard name for groups that are trying to influence world politics', before settling on the term 'NGO' to refer to these influence-seeking groups, as the term used and preferred in 'the world of diplomacy' (1996: 2, 3). Scholte, similarly, includes an allusion to influence-seeking in his definition of 'civil society'. Civil society, for him, should be understood as 'a political space where voluntary associations deliberately seek to shape the rules that govern one or other aspect of social life' (2002b: 146). 'Rules', he further specifies, 'encompass specific policies, more general norms, and deeper social structures', such as 'formal directives ..., informal constructs ... and/or the social order as a whole' (*ibid.*: 146). Keck and Sikkink place similar emphasis on deliberate attempts to influence elements of global governance in their definition of transnational advocacy networks. One of the defining features, for them, of such networks is their capacity 'to

mobilise information strategically to help create new issues and categories and to *persuade, pressure, and gain leverage* over much more powerful organisations and governments' (1998: 2, emphasis added). Other analysts allude to influence and forms of influence-seeking more in passing, writing in a way that suggests it can be taken for granted that 'influencing' is what NGOs and other civil society organisations seek to do. Susan Sell and Aseem Prakash, for example, argue that the 'strategies of business and NGO networks should be examined through a common lens' which examines 'how interest groups *employ ideas strategically* to frame debates, capitalise on policy crises to *create political opportunities*, and *graft their preferred goals onto debates* as solutions to pressing problems' (2004: 144, emphasis added). Whether relatively directly or more indirectly, '(global) civil society' is thus presented as a sphere of activity which is defined by deliberate attempts to exert influence or bring about change in global order.

Connected to this definitional emphasis on 'influence' and 'influence-seeking' is a tendency to present NGOs and other elements within civil society as *analytically interesting* because of the influence they exert in global governance. As mentioned earlier, this tendency derives in part from a perceived need to stake out conceptual and analytical space in which to examine what are presented as 'non-traditional' actors in international relations. According to Bob Reinalda, for example, "'NGOs exist, but ...'" seems to be the main reaction in international relations theory. Given the strong focus on self-interested nation-states as the primary units of international relations, hardly any room is left for autonomous NGO action' (2001: 15). He and his co-editors justify the focus of their edited volume on NGOs by arguing that 'non-state actors do matter in various ways', including 'their information and expertise', 'their *influence on political discourse, agenda setting, law making and decision making*', and 'because they are part of political, policy and institutional arrangements in the international system' (Reinalda et al 2001: 3, emphasis added). Colás makes a similar argument to justify his focus on 'international social movements', framing his book as a case 'for the relevance of voluntary, non-state, collective social and political agency in international relations' (Colás 2002: 1), on the basis that 'international social movements bring about change in international relations' (*ibid.*: 84).

Other analysts frame their enquiries as an exploration of the puzzle that emerges from the fact that NGOs *do* influence global governance, despite lacking material resources or being part of formal state structures. According to Price, for example, '[u]nlike terrorists and other transnational criminals ... these actors eschew the deployment of armed violence for their own ends. This makes their influence all the more of a puzzle, and it is this feature that animates the contemporary research program on transnational civil society' (2003: 580-1). Thus Jutta Joachim presents her work on NGOs in the United

Nations as an exploration of '[h]ow, why, and under what conditions ... NGOs [are] able to influence state's interests', before concluding 'that NGOs attempt to influence states' interests by framing problems, solutions, and justifications for political action' (2003: 247). Anna Holzscheiter, similarly, frames her discussion of the discursive power of what she calls 'non-state actors' as a response to the fact that 'global governance necessarily brings with it a variety of actors, resources, and modes of interaction' (2005: 724) and the need to understand 'the power of non-state actors' (*ibid.*: 725). She therefore 'sets out to construct an analytical framework for the study of power in global relations understood as effective social and linguistic practices based on immaterial capabilities' (*ibid.*: 726; see also Olesen 2005: 109).

The analysis and theories developed by scholars of 'NGOs', 'advocacy networks' and 'global social movements' have, similarly, often focused on explaining and/or modelling this 'influence' and 'impact'. Keck and Sikkink, for example, have developed an elaborate model to determine the type of influence transnational advocacy networks exert in global politics, focusing on five different 'types or stages of network influence' including 'issue creation and agenda setting', 'influence on institutional procedures' and 'influence on state behaviour' (1998: 25). They have also developed a 'typology of tactics that networks use in their efforts at persuasion, socialisation, and pressure' (*ibid.*: 16; see also Karns and Mingst 2004: 241 for another framework for analysing 'nonstate actor influence' on international institutions). Social movement scholars have also developed and applied concepts such as 'framing' and 'problem construction' as ways of explaining how actors within 'transnational social movements' are able to generate influence and impact. According to Thomas Olesen:

Constructing transnational problems is a complex process of making issues and problems in one locality intelligible and concerning for people in other and distant localities. The complexity derives from the fact that in a transnational context distance has many more facets than in a local or national context.

(2006: 7)

He uses the concept of 'problem construction' to analyse the ways in which organisations involved in the 'HIV/AIDS medicine access campaign' bridged 'physical, social and cultural distances' in order to be able to collectively influence states and international organisations (*ibid.*: 7). In other work, he uses the concept of 'framing' to conceptualise and analyse the ways in which social movements generate awareness of and support for their cause, and thus influence their target publics. As he puts it:

Reality is not objectively given and in modern, democratic and reflexive societies it is particularly open to interpretation. Social movement frames thus seek to persuade the public, the media and politicians that their



interpretations of events and situations are more convincing than those offered by their opponents.

(2005: 121)

He then sets out to explore 'what makes some frames succeed and others fail', asserting that 'this question is crucial to understanding the global democratic structure and the role played by social movements within it' (*ibid.*: 122, see also 124-128). André Broome also uses the concept of framing to explain how NGOs influenced the international debt regime, arguing that 'NGOs specifically employed the strategic use of frames to encourage policy makers to conceptualise the high sovereign debt levels of low-income countries in moral terms' (2009: 70; see also Shawki 2010). Concepts like 'the exercise of moral authority' (Broome 2009: 76) and 'agenda-setting' (Yanacopulos 2005b: 261) have also been used to identify and explain the bases of NGO influence over other actors in global governance.

There are scholars who self-consciously avoid analysing NGOs in terms of the influence they exert on other actors or processes – Kerstin Martens, for example, '[i]nstead of focusing on NGO influence on the [UN]', identifies and analyses 'the modes of NGO incorporation into the UN system' (2001: 388) – as well as scholars who conceptualise the relationship between NGOs and other parts of the global system in more complex, interconnected ways (see e.g. Jaeger 2007; Martens 2006; Sending and Neumann 2006; Steele and Amoureux 2005). Nevertheless, the definitional and analytical emphasis on 'influence' permeates and dominates the literature on the role of civil society in global governance. The emphasis on 'influence' and 'influence-seeking' is present not only in the definitions that scholars offer of their objects of analysis, but also in the way they rationalise their interest in NGOs and other 'non-traditional' actors in global governance, and in the analytical puzzles they pose and try to address. The overall understanding and impression of civil society and its role in global governance that emerges from this literature is that 'influence' is not only what NGOs and other parts of '(global) civil society' do, but is also what makes these organisations and groupings relevant and analytically interesting to scholars of international relations and global governance.

Defining and analysing civil society in this way, as primarily if not predominantly influence-seeking and influence-generating, leads, however, to a number of significant oversights and limitations in the existing literature. It creates the unhelpful impression that '(global) civil society' is populated primarily by actors who, firstly, wish to exert influence over other actors in the global system, and, secondly, are successful at doing so. It thus removes from view (and from mainstream scholarly discussion) organisations and groups of individuals who are either uninterested in or are unsuccessful at

influencing global actors and global structures, whether through lack of access to the necessary information and linguistic and/or material resources, or through philosophies of action that favour constructing alternative power structures and networks to challenging and seeking to influence existing arrangements. In doing so, it also removes the potential to examine the dynamics and politics at work between more visible, more influential elements in global civil society and those less visible, less influential organisations and groups that either choose not or lack access to appropriate resources to attempt to 'influence' policy-makers and policy debates. Defining civil society in terms of the influence it exerts also disposes scholars to analyse influential organisations and campaigns, rather than investigate or theorise the factors that might account for non-influence or non-visibility. Such a focus on influence and impact can thus invisibilise the power dynamics, exclusionary processes and politics of representation that can operate within 'global civil society' and global order more broadly, generating a distorted and incomplete picture of this 'global civil society' and the ways in which it connects and intersects with global governance.

## Conclusion

In this chapter I have presented an overview of the different literatures that attempt to investigate, interpret and theorise the role played by civil society in global governance, including literatures that have developed around the concepts of 'global social movements', 'transnational advocacy networks', 'NGOs' and '(global/transnational /international) civil society'. I have identified a number of tendencies, analytical conventions and narrative tropes in evidence across these literatures, and have discussed the ways in which they obscure or impede understanding of 'global civil society' and the ways in which it is implicated in global governance. Although, as has also been discussed, not all accounts of the role played by civil society in global governance reproduce these conventions and tropes, there are marked tendencies in the literature as a whole towards (1) portraying and researching 'global civil society' as if it were a homogenous global space populated by homogenous global actors; (2) focusing on the ways in which civil society actors can enhance global democracy without considering the ways in which they can also undermine it; and (3) presenting and analysing 'global civil society' primarily in terms of the 'influence' it exerts over other actors and policy debates, removing from view themes such as the power dynamics and politics of representation at work within 'global civil society'. These tendencies thus lead to an overall body of knowledge about the role played by civil society in global governance that overemphasises the degree of cohesion and uniformity within this sphere, and underestimates the degree of diversity, power dynamics and exclusionary processes and politics of representation that also characterise global civil society.

How then should we conceptualise and research the role of civil society in global governance in a manner which avoids some of these distortions and erasures? How can we examine civil society involvement in global governance in ways that are sensitive to the differences between different kinds of organisations and groupings that are understood to comprise it? How do we research and draw conclusions about the role of civil society in global governance without reproducing the unhelpful notion that global civil society is a homogenous space? How do we account for the greater visibility of some sections of civil society in comparison to others? How do we avoid reproducing the assumption that global civil society automatically democratises global governance? How do we conceptualise civil society in a way which allows us to capture types of relationship between civil society actors and global governance processes other than 'influence' and 'impact'? In the following chapter, I set out a theoretical and methodological approach to the study of the role played by civil society in global governance that is sensitive to these types of questions, and that underpins the analysis developed in later chapters.

## Chapter Two

# Researching the Role of Civil Society in Global Governance: An Alternative Approach

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In this chapter, I present an approach to studying the role of civil society in global governance which avoids reproducing some of the more problematic assumptions and misrepresentations that are present in much of the existing literature, and which enables exploration of important but under-examined themes. I draw on two main theoretical sources: governmentality theory, particularly practice-oriented readings of it, and ethnographic research methodology as developed and applied by cultural and social anthropologists. This approach is intended to facilitate an examination of the relationship emerging between the WTO and civil society which is sensitive to the differences and tensions that exist between the different organisations understood to be part of 'global civil society', and which helps to explore what makes some parts of this 'global civil society' more visible, influential and thus more involved in global governance than others.

The chapter is divided into two sections. In the first section, I outline the overall theoretical orientation which underpins this study, and informs the line of argument and analysis developed. I also outline the specific concepts and analytical categories used in subsequent chapters to develop and structure the analysis. In the second section, I outline the methodological principles which guided the generation and analysis of the

empirical data, and show how this methodological approach, in combination with the theoretical framework, helps overcome some of the problems and erasures noted in the existing literature. This combination of theoretical and methodological elements is intended to capture some of the diversity present in the vast field of activity known as 'global civil society', and to enable the development of a theoretically-sophisticated and nuanced account of the ways in which it connects to the WTO. The chapter concludes with a summary of the advantages of such an approach, and the important lines of analysis it opens up.

## Theoretical and Conceptual Framework

The theoretical and conceptual framework underpinning this study is derived primarily from the growing body of literature on governmentality in disciplines such as Anthropology, Geography, Sociology, Politics and International Relations, supplemented by elements from Michel Foucault's earlier work on power and discourse and Pierre Bourdieu's approach to analysing social structures. The governmentality-inspired literature, as well as the work drawing on Foucauldian and Bourdieusian approaches, is vast and diverse, and encompasses a range of applications, uses and interpretations of the key terms.<sup>10</sup> My intention here is not to provide a detailed overview or summary of these literatures, nor is it to discuss the different ways in which key concepts have been interpreted and applied.<sup>11</sup> My intention, rather, is to present my own anthropologically-filtered reading of Foucault's discussion of governmentality and the work it has inspired, discuss how the other Foucauldian and Bourdieusian concepts I make use of intersect with this, and show how the theoretical approach adopted helps examine the empirical material explored in this study. This section is divided into a number of sub-sections which discuss: (1) the understanding of 'government' and 'governing' developed by governmentality scholars and adopted in this study; (2) the inter-connected notions of government as the 'conduct of conduct' and resistance to government as 'counter-conduct(s)'; (3) the understanding that domains of activity and the meaning of categories are not pre-existing or pre-ordained but are rather constituted in practice; (4) the understanding that governing always reflects, sustains and generates particular

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<sup>10</sup> There is, for example, a key distinction made in the governmentality literature, already present in Foucault's 'Security, Territory, Population' lectures at the Collège de France in 1977-1978 when he first started to use and explore the concept of 'governmentality', between governmentality as an analytical framework, and governmentality as a specific form of government in modern Western liberal societies, whose emergence Foucault dates to the end of the eighteenth century (see e.g. Bröckling et al 2011: 11; Foucault 2009: 108-109).

<sup>11</sup> For an overview of Foucault's discussion of governmentality and the ways in which governmentality has been applied as an analytical perspective in disciplines such as Criminology, Education, Media Studies and Organisational Sociology in Anglophone and non-Anglophone academic settings, see Bröckling et al 2011: 1-10.

'regimes of truth' or 'mentalities of government'; (5) the concepts of 'subjects', 'subjectivity' and the governmental process of 'subjectification'; and (6) the conceptualisation of the spaces in which interaction takes place between representatives of civil society and the WTO as a distinct field of activity in the Bourdieusian sense of the term. In this way, the discussion moves from a number of general background and orienting assumptions to the more specific concepts I rely on to carry out and structure my analysis.

## *Governing and Government*

The terms 'governing' and 'government' are used more or less interchangeably in the governmentality literature to refer to often complex sets of practices and processes that shape behaviours, subjectivities and outcomes by facilitating and constraining particular models of action. Michel Foucault conceptualised government as 'modes of action, more or less considered and calculated, which [are] destined to act upon the possibilities of action of other people. To govern, in this sense, is to structure the possible field of action of others' (1983: 221). Governmentality scholars have taken up and developed this conceptualisation of government as a 'more or less calculated activity' which works through structuring possibilities and models of action, and further developed their conceptualisations and definitions. Mitchell Dean, for example, has defined government as 'any more or less calculated and rational activity, undertaken by a multiplicity of authorities and agencies ... that seeks to shape conduct by working through our desires, aspirations, interests and beliefs' (1999: 11). Government is not, governmentality scholars insist, a form of domination or determination; it relies, rather, on individuals coming to identify themselves with the logics transmitted and carried by particular governmental practices. According to Graham Burchell, '[w]hen we are governed, when our behaviour is managed, directed or conducted by others, we do not become the passive objects of a physical determination. To govern individuals is to get them to act and to align their particular wills with ends imposed on them through constraining and facilitating models of possible actions' (1991: 119). Governing and government, in the governmentality perspective, are thus understood as modalities of power which, as Rita Abrahamsen has put it, rely on 'techniques of normalisation and consensus, as opposed to more overtly coercive forms of power' (2004: 1459).

There is a tension, however, in the governmentality literature between conceptualisations of government as a 'more or less calculated' activity, and an emphasis on contingency and the unexpected, 'unpredictable consequences, effects and outcomes' (Dean 1999: 11) that processes of government can generate. While most governmentality scholars agree that the process of governing necessarily entails at least

an element of contingency (see e.g. Burchell 1991: 119; Dean 1999: 29; Merlingen 2003: 367; Walters and Haahr 2005: 12), there is a tendency in this literature to depict the process of government as a calculated, rational, even programmatic activity. Thus Mitchell Dean, for example, despite conceptualising what he calls 'regimes of governmental practices' as 'composed of heterogeneous elements having diverse historical trajectories', defines government as 'any attempt to shape with some degree of deliberation aspects of our behaviour according to particular sets of norms and for a variety of ends' (1999: 9). Government is thus presented as a calculated, conscious activity with pre-determined ends. Nikolas Rose and Peter Miller, similarly, characterise government as 'a domain of strategies, techniques and procedures through which different forces seek to render programmes operable' (1992: 183), also emphasising the role of intentionality and deliberate calculation in governmental processes.

This 'programmer's view', as it is sometimes referred to (e.g. Huxley 2007: 190; Miller and Rose 2008: 39), although prevalent particularly in some of the attempts to expand and apply Foucault's notion of government in the early 1990s, is not the understanding of government that I apply and explore in this study. My own reading of Foucault's work on governmentality, shaped by my observations and discussions with officials in the WTO as well as other scholarly discussions of governmentality (e.g. Rutherford 2007: 300), is one which emphasises the always contingent, contested and incoherent nature of governmental activities. While there may be an element of intentionality or deliberate calculation present in the processes and practices of governing, for example in efforts on the part of would-be 'governors' to mobilise particular governmental technologies and techniques, these may be contradicted, challenged or undermined by other programmes, practices and logics. As Nikolas Rose and Peter Miller have put it:

Government is a congenitally failing operation ... Technologies produce unexpected problems, are utilised for their own ends by those who are supposed to merely operate them, are hampered by under-funding, professional rivalries, and the impossibility of producing the technical conditions that would make them work - reliable statistics, efficient communication systems, clear lines of command, properly designed buildings, well framed regulations or whatever. Unplanned outcomes emerge from the intersection of one technology with another, or from the unexpected consequences of putting one technique to work.

(1992: 190)

In the perspective underpinning this study, governing takes place through a complex, sometimes contradictory set of practices, procedures and rationalisations. In the realm of everyday practice in which governing is instantiated, articulated and also contested, governmental techniques, technologies and rationalities can accumulate and combine in both complementary and contradictory ways. A field of possible action can thus come

to be governed in ways which are far removed from any conscious or calculated design. Governing emerges, in short, through a combination and accumulation of practices emanating from diverse sources and rationalisations, which combine to structure, facilitate and constrain possibilities of thought and action in regular and identifiable ways.

### *The Conduct of Conduct and Counter-Conduct(s)*

Another phrase frequently used in the governmentality literature to refer to the activity of governing or government is the 'conduct of conduct'. In alluding to the breadth of processes through which government takes place and to the breadth of targets of these governmental processes, the phrase 'conduct of conduct' is intended to capture some of what is distinctive about the understanding of government developed and applied by governmentality scholars. Its use stems from Foucault's discussion in his 'Security, Territory, Population' lectures of the most appropriate terminology to refer to the ways in which modern forms of government exercise control over populations. The term 'conduct' is preferred as it can be used, Foucault argued, to refer to a broad range of governmental processes as well as their targets. As he put it in lecture eight of the series:

the word 'conduct' refers to two things. Conduct is the activity of conducting (*conduire*), of conduction (*la conduction*) if you like, but it is equally the way in which one conducts oneself (*se conduit*), lets oneself be conducted (*se laisse conduire*), is conducted (*est conduit*), and finally, in which one behaves (*se comporter*) as an effect of a form of conduct (*une conduite*) as the action of conducting or of conduction (*conduction*).  
(2009: 193)

Understanding government as 'the conduct of conduct' thus opens up the possibility that the activity of 'conducting' or directing behaviour may be performed or achieved on one's own or on another's 'conduct'. In other words, it blurs the conventional distinction between 'governor' and 'governed', allowing for individuals and groups to be both governing and governed at the same time. As Dean clarifies:

to define government as 'conduct of conduct' is to open up the examination of self-government or cases in which governor and governed are two aspects of the one actor, whether that actor be a human individual or a collective or corporation. Thus the notion of government extends to cover the way in which an individual questions his or her own conduct (or *problematizes* it) so that he or she may be better able to govern it. In other words government encompasses not only how we exercise authority over others ... but how we govern ourselves.

(1999: 12, italics in original)



Using the term 'conduct' also enables scholars to examine a broad range of activities, processes and fields of behaviour as the sites and targets of particular governmental strategies, logics and mentalities. The 'conduct' that is 'conducted' or directed through processes of governing can include particular practices, habits, tendencies and behaviours, subjectivities (discussed in more detail below), 'action-orientations' (Sending and Neumann 2006: 657) and 'inward states' (Huxley 2007: 187), as well as general attitudes and understandings of the self and what constitutes appropriate behaviour in a given situation. One of the great advantages of the concept 'conduct of conduct' is thus the range and scope of human and social activity that can be interrogated as constituent parts and/or targets of governmental techniques and rationalities.

Related to this conceptualisation of governing as 'the conduct of conduct' is the conceptualisation of resistance or dissent to governmental processes as 'counter-conduct' or 'counter-conducts'. Although these phrases have not been adopted within Anglophone governmentality studies with the same enthusiasm as the term 'conduct of conduct',<sup>12</sup> they provide a useful way of conceptualising resistance to governmental logics and processes. Counter-conducts are forms of conduct whose logic contradicts or challenges dominant governmental mentalities and governmental technologies, forms of conduct that might otherwise be labelled 'resistance', 'dissidence' or 'revolt'.<sup>13</sup> According to Foucault, the term 'counter-conduct' allows:

reference to the active sense of the word "conduct" - counter-conduct in the sense of struggle against the processes implemented for conducting others; which is why I prefer it to "misconduct (*inconduite*)", which only refers to the passive sense of the word, of behaviour: not conducting oneself properly.  
(2009: 201)

The term 'counter-conduct' also carries an implicit reference to an understanding of government and resistance as mutually constitutive processes. As Foucault emphasised in a later lecture in the 'Security, Territory, Population' series, counter-conducts emerge in parallel with (and response to) the programmes, practices and calculations that constitute particular governmental regimes (*ibid.*: 335). They are not external to governmental processes, but rather form part of the complex set of negotiations, revisions and calculations that sustain them. Counter-conducts should not be seen, therefore, as separate from government. The analysis presented in subsequent chapters thus incorporates a sensitivity to and awareness of the counter-conducts that are emerging in parallel with the governmental processes identified.

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<sup>12</sup> For a rare exception see Death 2011 (forthcoming).

<sup>13</sup> See Foucault 2009: 200-202 for a more detailed discussion of why he prefers the phrase 'counter-conduct' to these other ways of conceptualising resistance.

## *The Centrality of Practice*

This study, in common with the governmentality literature does not conceptualise 'civil society', 'global civil society' or any other sphere of human or social activity as a natural, pre-given domain. 'Civil society' and the communicative spaces that are opening up between it and the WTO are, rather, understood to be constituted, and their meaning negotiated and contested, through everyday practice.<sup>14</sup> As Wendy Larner and William Walters have put it, governmentality studies endeavour 'to account for the emergence of domains at the level of their practices' (2004: 11), rather than attributing or inferring any pre-given meaning or substance to these domains. The social world, and the fields of activity we conventionally divided it into, do not exist as pre-formed entities, but are constituted through an active and ongoing process whereby knowledge-bearing and knowledge-generating practices come to define their boundaries and the characteristics attributed to them. As Michael Merlingen has emphasised, governmentality perspectives assume that:

The framing of what is to be governed and how ... is an active, technical process. Inscription devices do not register an already always structured world but actively act upon the real so as to make it stable, mobile, comparable and ultimately governable.

(2006: 187)

It is the gradual accumulation of sometimes complementary, sometimes contradictory practices that is understood to generate particular meanings and beliefs about a domain or field of activity, and to thus constitute it as knowable and governable. Thus rather than starting from any pre-existing idea about what 'civil society' (the term preferred within the WTO) or 'global civil society' (the term preferred in much of the academic literature) look like, or any fixed idea about the type of communication that takes place between 'civil society' and the WTO, I approach 'civil society' as a category whose meaning is fixed and determined in practice. To put it another way, practices are, in this study and the governmentality literature more broadly, understood to be performative (Sharma and Gupta 2006: 13). They are not simply the outward manifestation of a particular pre-determined governmental policy or strategy on a pre-given domain; rather, practices themselves are what constitute and define these policies and strategies, as well as the domains on which they are destined to act.

This understanding of practices as constitutive of policy is particularly useful and relevant in the case of the WTO's relationship with 'global civil society', where it is acknowledged even in official WTO publications that practice has played a central role in

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<sup>14</sup> The WTO is also understood in this manner, i.e. as a bundle of practices whose meaning and content is not pre-determined but is debated, negotiated and stabilised in practice.

defining the WTO's overall policy towards NGOs and other civil society organisations. As outlined in the introduction to this thesis, the WTO's policy towards civil society has evolved significantly over the past decade and a half, from being characterised by something approaching indifference on the part of WTO officials and national delegates to the activities of civil society in the mid-late 1990s, to an emphasis on transparency in the wake of the Seattle protests in the early 2000s, to what WTO officials now refer to as a 'substance-based dialogue'. According to the authors of the WTO-published *World Trade Report 2007*, 'the evolution of this relationship is a result of practice rather than procedural changes and the granting of specific rights' (342, emphasis added). The formal guidelines governing WTO interactions with civil society have remained unchanged since 1996, yet the practices that constitute this policy on a day-to-day level have in many ways been transformed. Practice defines policy to the extent, the same report suggests, that 'current WTO practices for interacting with NGOs go far beyond anything that Members would be able to formally agree upon by consensus. These practices are solidly anchored in the culture of the WTO and it would be highly controversial to envisage a roll back' (*ibid.*: 342). A theoretical perspective which recognises the centrality of practice and the importance of knowledge-bearing and knowledge-generating practices is thus particularly appropriate in this empirical context, where everyday practice plays such a central role in defining and determining what kind of relationship can exist between 'civil society' and the WTO.

### *Regimes of Truth and Mentalities of Government*

Another significant feature of governmentality approaches is the understanding that governmental processes always reflect, sustain and even generate particular rationalities or frameworks of knowledge. As Ulrich Bröckling and his co-authors have put it, 'analyses of governmentality are centred on the question of how practices and thinking about these practices constitute themselves mutually, or more precisely: how they translate into each other' (2011: 11). Practices and the forms of rationality that they generate and sustain are thus understood to be mutually constitutive, and to necessitate concepts and forms of analysis that can capture the ways in which, as Dean puts it, 'thought operates within our organised ways of doing things, our *regimes of practices*, and with its ambitions and effects' (1999: 17-18). Thus for Foucault, for example, analysing processes of government involves paying attention to 'how forms of rationality inscribe themselves in practices or systems of practices, and what role they play within them, because it's true that 'practices' don't exist without a certain regime of rationality' (1991b: 79). Larner and Walters, similarly, emphasise that a governmentality approach 'entails a move of "bracketing" the world of underlying forces and causes, and instead examining the different ways in which the real has been inscribed in thought' (2004: 16).

Governmentality scholars have developed a variety of terms and concepts intended to capture the ways in which thought and forms of rationality, as well as the discursive structures that mediate and transmit them, are implicated in governmental processes. Foucault, for example, in his 'Security, Territory, Population' lectures, simply uses the term 'knowledges', and discusses the ways in which the emergence of 'government' as a specific modality of power has 'led to the development of a series of specific governmental apparatuses (*appareils*) on the one hand, [and, on the other] to the development of a series of knowledges (*savoirs*)' (2009: 108, brackets and italics in original). He identified several examples of these 'knowledges', connected, he argued, to specific governmental regimes that have been dominant in different historical periods in Western Europe. Modern liberal government, for example, is seen as having 'the population as its target, political economy as its major form of knowledge, and apparatuses of security as its essential technical instrument' (*ibid.*: 108). Other governmentality scholars have developed and applied more specific concepts to try to capture the ways in which thought is implicated in government, including the terms 'political rationality' (see e.g. Barry et al 1996; Gordon 1991; Merlingen 2006; Rose and Miller 1992), 'mentality of government' (Dean 1999; Merlingen 2003; Rose 1991, 2000) and 'governmental rationality' (e.g. Gordon 1991; Duffield 2001; Hindess 1997; Sending 2006). All of these terms are used more or less interchangeably to capture the idea that processes of government always rely on and reinforce particular ways of thinking about the population, domain of activity or issue area that is to be governed. Merlingen, for example, defines 'mentalities or rationalities of government' as 'discursive formations, intimately linked to structures of power that produce *effects of truth* with regard to specific fields of governance, such as madness or crime' (2003: 366, emphasis added). Rose and Miller provide a similar definition of 'political rationalities'. As they put it:

political rationalities have what one might term an *epistemological* character. That is to say, they are articulated in relation to some conception of the nature of the objects governed - society, the nation, the population, the economy. In particular they embody some account of the persons over whom government is to be exercised.

(1992: 179, italics in original)

According to Dean, political rationalities and the broader forms of truth and knowledge they incorporate are not always explicitly recognised by those who are implicated in governmental regimes. 'The idea of mentalities of government', he argues, 'emphasises the way in which the thought involved in practices of government is relatively taken for granted, i.e. not usually open to questioning by its practitioners' (1999: 16). Mentalities of government and political rationalities may thus be seen by those who transmit and reproduce them as common-sense, self-evident ways of conceptualising domains of activity or problematising particular behaviours or subjectivities. To borrow Bourdieu's terminology, political rationalities can be considered part of the *doxa*, the 'fundamental

presuppositions of [a] field' (Bourdieu 1990b: 68), which are learnt and acquired through practical action within it.

Anyone familiar with Foucault's earlier work on power and discourse will no doubt recognise the logic and assumptions underpinning the concepts of 'knowledges', 'mentalities of government' and 'political rationalities', as well as the ways in which these discursive formations are seen to connect to practice, through, for example, generating 'effects of truth' (Merlingen 2003: 366). In this study, I also draw on this related earlier work, specifically the concept of 'regimes of truth', to better capture the complex, overlapping, sometimes contradictory ways in which thought and rationality are involved in governing the field of activity in which interaction takes place between civil society and the WTO. Concepts like 'political rationalities' and 'mentalities of government' suggest more uniformity of form and purpose in the discursive formations structuring practice than is present in the material examined here. Rather than rely uniquely on these terms, therefore, I also make use of the more fluid, multiform concept of 'regimes of truth'. According to Foucault:

Each society has its regime of truth, its 'general politics' of truth – that is, the types of discourse it accepts and makes function as true; the mechanisms and instances that enable one to distinguish true and false statements; the means by which each is sanctioned; the techniques and procedures accorded value in the acquisition of truth; the status of those charged with saying what counts as true.

(Foucault 2000: 131)

The concept of 'regimes of truth' thus helps capture the more subtle and less programmatic ways in which thought and assumptions about the political and social world are also implicated in governing the field of civil society-WTO interactions.

### *Subjects, Subjectivity and Subjectification*

Alongside this attention to the ways in which thought is implicated in governmental practice, governmentality approaches are also sensitive to the ways in which governmental logics and rationalities work on and through individuals' sense of identity and self. Governmentality scholars make frequent use of concepts such as 'subjects', 'subjectivity' and 'subjectification' in order to capture and explore the ways in which individuals and groups can be absorbed into and (re-)produce the logic of governmental regimes through their identities and self-understandings. According to Foucault, '[t]here are two meanings of the word "subject": subject to someone else by control and dependence, and tied to his [*sic*] identity by a conscience or self-knowledge. Both

meanings suggest a form of power that subjugates and makes subject to' (2000: 331). The concept of 'subject' thus alludes not only to the ways in which broader power relations and discursive structures can subjectify and exercise control over individuals and groups, but also to the ways in which individuals may *conduct their own conduct*, through aligning their sense of identity with particular categories, logics and subject-positions. As Bröckling and his co-authors put it, '[t]o become a subject means actualising certain subject-positions and dispensing with others; it means being addressed in a certain way as a subject, understanding oneself as a subject, and working on oneself in alignment with this self-understanding' (2011: 14). For governmentality and other Foucauldian-inspired scholars, examining how discursive formations create, encourage and (re)produce certain types of subjects is crucial to understanding processes of government. According to Foucault, for example:

if we take the question of power, of political power, situating it in the more general question of governmentality understood as a strategic field of power relations in the broadest and not merely political sense of the term, if we understand by governmentality a strategic field of power relations in their mobility, transformability and reversibility, then I do not think that reflection on this notion of governmentality can avoid passing through, theoretically and practically, the element of a subject defined by the relationship of self to self ... an analysis of governmentality – that is of power as a set of reversible relationships – must refer to an ethics of the subject defined by the relationship of self to self.

(2005: 252; see also Dean 1999: 23, 32; Walters and Haahr 2005: 13)

Some Foucauldian scholars place particular emphasis on understanding the ways in which discursive formations act differently on different types of subject, as a way of further unpacking the ways in which power relations play out in and through the creation or incitation of particular types of subject. For Gavin Kendall and Gary Wickham, for example, 'attention must be drawn to the ways in which power relations differentially position subjects in discourse, even when (perhaps especially when) this produces "contradictory subjectivity"' (2000: 54). My analysis explores the ways in which discourses create and suggest different responses to different subject-positions, as a way of capturing some of the diversity, power dynamics and exclusionary processes that are present in 'global civil society', and the diversity of ways in which this 'global civil society' interacts with the WTO.

In addition to the concept of 'subject', governmentality scholars also use the term 'subjectivity' to refer to and explore the ways in which discursive formations work on identities and self-understandings. The term is used in a number of connected ways. It

can refer, for example, in a general sense to the identities, attitudes, self-understandings and 'action-orientations' (Sending and Neumann 2006: 657) of individual subjects, and to indicate that these can be a site and target of governmental processes. 'Subjectivity' is thus understood as one of the domains in and through which governmental processes operate, a particular field of governmental activity and analysis (see e.g. Miller and Rose 1998; Rose 1993, 1996). It is also used in a more specific sense, to refer to particular forms of subjectivity, particular types of identity and self-understanding. Thus William Walters and Jens Henrik Haahr, for example, argue that 'power works in terms of the ways we govern ourselves; it encourages us to adopt such subjectivities as the active jobseeker, the empowered citizen, the discerning consumer, the interested stakeholder, the informed investor, and so on' (2005: 13; see also Dean 1999: 32). Irrespective of the particular meaning, however, governmentality scholars do not understand subjectivity or specific forms of subjectivity as fixed or imposed from above on passive, unquestioning, previously empty subjects. Subjects are, rather, understood to be active participants in the construction of their subjectivities. According to Dean, 'regimes of government do not *determine* forms of subjectivity. They elicit, promote, facilitate, foster and attribute various capacities, qualities and statuses to particular agents, ... [and] are successful to the extent that these agents come to experience themselves through such capacities' (Dean 1999: 32). The forms of subjectivity elicited and favoured are, moreover, understood to be context- and governmental regime-specific. As Burchell has put it:

Governed individuals may be identified by their governors as members of a flock to be led, as legal subjects with certain rights, as children to be corrected and educated, as part of a natural resource to be exploited, or as living beings who are part of a biological population to be managed. In each case the subjective self-identity presupposed or required by the exercise of political power will be different.

(1991: 120)

One term that is often used by governmentality scholars to conceptualise the contingent, context-specific processes through which subjects come to adopt particular forms of subjectivity, and experience themselves in terms of the categories and characteristics attributed to them by particular discursive formations, is 'subjectification'. 'Subjectification', according to Stephen Legg, is:

the process by which one conceives of oneself as a subject, positioned in various discourses, for instance, of gender, sexuality, age, class, physical ability, but also of citizens' responsibilities, the need to account for and calculate, or the urge to reproduce or exercise.

(2005: 145)

Subjectification takes place not through techniques of domination or control, but through what Foucault has called the 'government of the self' (2005: 252), in which subjects' own efforts to conform to the categories and logics inherent in discourses and in regimes of governmental practices leads them to identify with and enact particular subject positions. Subjectification should thus be understood as an iterative, inherently social process, which is only ever variably successful, as it works to the extent that subjects themselves come to experience themselves through and identify themselves with the relevant forms of subjectivity. Nevertheless, subjectification is one of the processes that ties individual subjects to particular governmental regimes and processes. As Bröckling and his co-authors put it, '[p]rocesses of subjectification ... generate themselves performatively, but their performances are bound into orders of knowledge, lines of force, and power relations. Thus subjectification designates a potential for action, but always a form of adherence as well' (2011: 14).

### *Civil Society-WTO Interactions as a Bourdieusian Field*

The final element of the theoretical and conceptual framework underpinning this study to be discussed here is the use of Bourdieu's concept of 'field' to conceptualise the social space in which interaction takes place between representatives of civil society and the WTO. Although many of the orienting assumptions and specific concepts underpinning this study are derived from Foucault and others' work on governmentality, this literature offers little guidance about how to conceptualise the spaces or zones of contact in which embodied representatives of 'global civil society' and embodied representatives of an institution of global governance meet and interact. Governmentality approaches to global civil society have focused mainly on theorising and re-conceptualising global civil society as constitutive of global governance, as 'an object *and* a subject of government' (Sending and Neumann 2006: 652) that is already internalised within global power relations (see e.g. Amoore and Langley 2004, 2005; Jaeger 2007; Lipschutz 2005a, 2005b, 2007; Lipschutz with Rowe 2005; Sending and Neumann 2006). Although the concepts and arguments developed in this literature help theorise the role and place of 'global civil society' in global order, and thus point to numerous issues that are worth exploring in an analysis of the interactions that take place between civil society actors and an institute of global governance, they do little to help conceptualise the concrete social spaces in which such interaction takes place. Similarly, they do little to help explore how the particular culture, norms and expectations that emerge within such spaces might (re-)produce, enable or challenge the broader power relations and mentalities these scholars identify in operation at the global level.



In order, then, to analyse the concrete social spaces in which interaction takes place between representatives of 'civil society' and the WTO, and to open up exploration of the particular disciplinary norms, culture and social structures that have emerged within them, I borrow Pierre Bourdieu's concept of 'field' (Bourdieu 1990b: 55-56, 66, 2005: 8-9; Bourdieu and Wacquant 1992: 97-98). I conceptualise the various formal, informal and virtual spaces in which concrete, embodied 'civil society' actors interact with concrete, embodied representatives of the 'WTO' as part of a broader social field, which has its own 'regularities' (Bourdieu 2005: 8), forms of capital (Bourdieu and Wacquant 1992: 98) and 'dispositions acquired through learning processes associated with protracted dealings' within it (Bourdieu 2005: 8-9). According to Bourdieu and Wacquant:

the social cosmos is made up of a number of ... social microcosms, i.e. spaces of objective relations that are the site of a logic and a necessity that are *specific and irreducible* to those that regulate other fields. For instance, the artistic field, or the religious field, or the economic field all follow specific logics.

(1992: 97, italics in original)

The field of civil society-WTO interactions, as I have termed it, extends across, underneath and through the various spaces in which interaction takes place between members of 'global civil society' and individuals who are involved in making and/or implementing WTO policy, i.e. staff in the WTO Secretariat, national delegates to the WTO, and, dependent on country, trade officials at a government level who determine national trade policy. This field is understood, following Bourdieu and Wacquant's formulation, to possess its own logic and regularities, and to work to *conduct the conduct* of those who participate in it in ways that are context-specific and not irreducible to the logics in operation in other fields. Conceptualising the formal, informal and virtual spaces in which interaction takes place between embodied representatives of 'global civil society' and the 'WTO' in this way thus opens up space in which to examine whether and how the particular logics, mentalities and dispositions (or, to use more Foucauldian language, forms of subjectivity) in this field might challenge or bolster broader power relations and governmental rationalities.

## Methodology

The methodological approach adopted in this study draws significantly on ethnographic research methodology as developed and applied by social and cultural anthropologists. Despite growing interest in ethnographic and anthropological approaches to the study of politics and international relations, the methodological debates and applications of ethnographic research methodology have not been as developed as those in

anthropology, and indeed, have tended to cite these anthropological debates as evidence of a need to carry out more anthropological research in politics and international relations (see e.g. Beier 2005; Brigg and Bleiker 2008; Cohn 1987, 2006; Eckl 2008; Hopgood 2006; Mandaville 2002; Neumann 2002; Schatz 2009; Vrasti 2008). The understanding of ethnography and ethnographic research underpinning this study is thus derived mainly from the anthropological literature (e.g. Appadurai 1991, 1996, 2002; Burawoy 1998, 2000a, 2001; Comaroff and Comaroff 1992, 2003; Davies 1999; Fisher 1997; Geertz 1993, 2000a, 2000b; Hann 1996; Hart 2006; Marcus 1995, 1998, 2010; Scott 1985; Shore and Wright 1997; Wacquant 2003), as well as methodological debates in related disciplines such as geography (e.g. Crang and Cook 2007; Herbert 2000).

In this section, I outline the specific methodological principles, derived in large part from engagement with methodological debates in the fields of social and cultural anthropology, which guided the design and implementation of this study. I also show how applying these methodological principles, in combination with the theoretical and conceptual framework discussed in the previous section, can help overcome and remedy some of the problems and erasures noted in the existing literature. The discussion is organised into three sub-sections. In the first sub-section, I discuss how approaching civil society and its role in global governance with an 'ethnographic sensibility' can help challenge overly neat, generalising theories and models, and thus enhance scholarly understanding. In the second, I suggest that using a multi-sited ethnographic approach that enables exploration of the connections and disconnections between different parts of 'global civil society' can also open up important lines of analysis. In the third, I discuss the ethical considerations raised by such a methodological approach, and provide an overview of the ways in which these considerations have been addressed throughout the research.

### *An Ethnographic Sensibility*

Although this study is not 'an ethnography' in the traditional sense of the term (see e.g. Denscombe 2003: 84-85; Willis and Trondman 2002: 394), it does adopt what some scholars have called an 'ethnographic sensibility' (Marcus 1998: 14; Schatz 2009: 5; Wedeen 2009: 90) to research and the social world. This ethnographic sensibility, in my reading of the anthropological literature, entails sensitivity and openness to a number of issues and possible lines of enquiry when carrying out empirical research. It entails, firstly, focusing on the processes through which meaning is transmitted, operationalised and negotiated in concrete social practice. According to Edward Schatz, 'ethnography is a sensibility that goes beyond face-to-face contact. It is an approach that cares – with

the possible emotional engagement that implies – to glean the meanings that the people under study attribute to their social and political reality’ (2009: 5). It thus involves paying attention to the ways in which ‘meaning systems are operationalised by group members’ (Herbert 2000: 556), rather than taking meanings of concepts and categories as fixed or pre-ordained. It also entails being sensitive to the ways in which meaning is transmitted, generated and negotiated through practice and social interaction. As Jean and John Comaroff have put it, ‘we take meaning to be largely, if not entirely, implicit in practice’ (1992: 38). This attention to the transmission and negotiation of meaning in practice complements governmentality approaches which seek to understand the ways in which thought and rationality are implicated in governmental practice, and which examine the ways in which domains of activity such as ‘global civil society’ acquire meaning through practice (see e.g. Larner and Walters 2004: 11). Focusing on meaning-transmission and negotiation also opens up analysis of the way in which concepts may be interpreted and enacted differently in different locales, thus providing a means to avoid treating ‘global civil society’ and the actors within it as homogenous units of analysis.

Researching with an ethnographic sensibility entails, secondly, approaching objects and fields of enquiry without fixed ideas about what will be found, or what line of reasoning will be developed about them. It requires ‘remaining as open as possible to the unpredictable and the informal in social life’ (Coleman and Collins 2006: 12), and responding to prompts and opportunities to increase understanding encountered ‘in the field’, even if these were not part of any initial research plan or schedule. As Lisa Wedeen argues, ‘ethnography as sensibility and activity implies the possibilities and pleasure of serendipitous encounter, the commitments to long-term engagement with places and inhabitants, and an abiding attention to what people say and do’ (2009: 90). Researching with an ethnographic sensibility thus entails being open to exploring topics and lines of enquiry that may only become evident through contact with and immersion in the field of enquiry. Thus rather than setting out to examine whether the increasing involvement of NGOs in global governance enhances global democracy, or to determine how and whether NGOs influence other actors in the global system, researching with an ethnographic sensibility entails approaching the field of enquiry with a flexible set of research questions, and an openness to refining them based on understanding gained through interacting with research participants.

An ethnographic sensibility entails, thirdly, researching ‘global’ processes and structures in a way which is sensitive to complexity, diversity and the ‘ecologies and politics of knowledge’ (Marcus 2010: 72) that play out across and between different geographical locales. The overall aim of ethnographic research is to ‘draw large conclusions from

small, but very densely textured facts; to support broad assertions about the role of culture in the construction of collective life by engaging [general concepts and systems of concepts] exactly with complex specifics' (Geertz 1993 [1973]: 28; see also Fife 2005: 133). It requires a sensitivity to the ways in which situated, context-specific processes and meanings interact and intersect with more general rationalities and structures, the ways in which 'local historical trajectories flow into complicated transnational structures' (Appadurai 1991: 209). It thus has much in common with Michel Foucault's concept of an 'ascending analysis' (1980: 99), which entails developing models and theories on the basis of micro-practices and 'micro-physics' (Foucault 1991a: 26) of power, and from these 'small-scale' practices and processes building larger-scale concepts and models. An ethnographic approach specifically emphasises, however, the complexity, silencing and tensions that can emerge in the encounter between situated knowledges and rationalities and the 'global'.

Through this sensitivity to complexity, diversity and the politics of knowledge, ethnographic researchers aspire to develop theories and understanding which are attentive to the complex interplay between differently situated knowledges, rationalities and processes, and which thus avoids reproducing the generalising models and narratives produced by other approaches. According to Mike Crang and Ian Cook, '[e]thnographic research reveals, and is often undertaken to question, the erroneous neatness of distanced, abstract, theoretical understandings of social, cultural, economic and other processes' (2007: 13). Approaching 'global civil society', as well as the actors and groupings of organisations that are understood to be part of it, with this kind of sensibility thus enables exploration of its role in global governance which is sensitive to relatively unexplored themes such as the power relations, exclusionary processes and politics of representation that can operate within this 'global civil society'. Indeed, anthropologists have long been advocating more ethnographic exploration of the complex roles and relations enacted by NGOs and other parts of 'civil society'. William Fisher, for example, has argued that:

An enhanced anthropological contribution would enrich a literature the majority of which is replete with sweeping generalisations; optimistic statements about the potentials of NGOs for delivering welfare services, implementing development projects, and facilitating democratisation; and instrumental treatises on building the capacity of NGOs to perform these functions. Unpacking this literature, much of which obscures its political stance in simple categories and generalisations, requires attention to three sets of issues that have concerned some anthropologists: (a) how discourses about NGOs create knowledge, define sets of appropriate practices, and facilitate and encourage NGO behaviour defined as appropriate; (b) how complex sets of relationships among various kinds of associations, the agencies and agents of the state, and individuals and communities have had

an impact in specific locales at specific times; and (c) how we can avoid reductionist views of NGOs as fixed and generalisable entities with essential characteristics and contextualise them within evolving processes of associating.

(1997: 441-2)

Chris Hann, similarly, has argued in favour of carrying out more ethnographic research into the different modes and models of associating that might be present within 'civil society' around the world. As he puts it, there is: 'something inherently unsatisfactory about the international propagation by Western scholars of an ideal of social organisation that seems to bear little relation to the current realities of their own countries; an ideal which, furthermore, developed in historical conditions that cannot be replicated in any other part of the world today' (1996: 1). Researching the role of civil society in global governance with a sensitivity to local differences, situated knowledges and ecologies and politics of knowledge also helps open up and complexify scholarly understanding, and avoid precisely this type of criticism.

### *A Multi-Sited Approach*

In addition to this 'ethnographic sensibility', I also borrow a more specific concept and methodological tool from the anthropological literature on methodology, namely a 'multi-sited' approach to collecting and generating research data (see e.g. Freidberg 2001; Garsten 2010; Hannerz 2003; Marcus 1995, 1998, 2010). According to George Marcus, one of the anthropologists most closely associated with developing the concept of multi-sited ethnographic research, multi-sited ethnography should be 'designed around chains, paths, threads, conjunctions, or juxtapositions of locations in which the ethnographer establishes some form of literal, physical presence, with an explicit, posited logic of association or connection among sites that in fact defines the arguments of the ethnography' (Marcus 1995: 105). Marcus suggests a number of logics of association or connection that ethnographic researchers might use to select their 'sites', including following the movements of particular groups of people (*ibid.*: 106); tracing the circulation of commodities, money or intellectual property (*ibid.*: 106-7), or signs, symbols and metaphors 'when the thing traced is within the realm of discourse and modes of thought' (*ibid.*: 108); and 'following the parties to conflicts' (*ibid.*: 110). Multi-sited ethnography, Marcus argues, enables researchers to capture, amongst other things, the processes of translation of forms of knowledge and cultural formations that take place between different geographical sites and cultural locations. As he puts it:

what is not lost but remains essential to multi-sited research is the function of translation from one cultural idiom or language to another. This practice is enhanced since it is no longer practised in the primary, dualistic "them-us" frame of conventional ethnography but requires considerably more nuancing

and shading as the practice of translation connects the several sites that research explores along unexpected and even dissonant fractures of social location.

(1995: 100)

More recently, Marcus has written about the concept and practice of multi-sited ethnography in ways that place more emphasis on the role of knowledge and discourse in global social life. As he puts it:

I am fascinated by the ethnography of contemporary forms of knowledge or knowledges, and it is the politics or ecology of such knowledge forms with which every project of ethnography of the contemporary (the recent past moving into the near future) begins. This is both the context and the scaffolding of fieldwork projects'

(2010: 72)

Such 'ethnography of zones of discourses' (*ibid.*: 72), Marcus argues, is one of the main ways in which anthropological practice can contribute to understanding contemporary global life and order.

The methodological approach adopted in this study incorporates two specific elements of Marcus's conceptualisation of multi-sited ethnography. I have, firstly, collected and generated data in multiple geographical sites, and, secondly, conceptualise what I am examining as 'zones of discourses' and the 'politics or ecology' of knowledge (2010: 72). Empirical data has been collected and generated in Geneva, Switzerland, home to both the WTO Secretariat and scores of mainly international NGOs that seek to monitor and feed into negotiations that take place there, and Lima, Iquitos, Cusco and Puno in Peru. These different geographical locations can all, in different ways, be considered centres of debate over issues relating to intellectual property policy and the protection of traditional knowledge and biodiversity. The 'explicit, posited logic of association or connection' (Marcus 1995: 105) between these sites is a logic of juxtaposition intended to permit exploration of the ways in which different kinds of civil society organisations are implicated in, or excluded from, this field of global governance. The organisations in Geneva are mainly international, professionalised NGOs that also have offices in North America and Europe, although a few Southern NGOs such as CUTS International and Third World Network and some smaller NGOs have also established a base there. The organisations in Peru are more varied, and include offices of international NGOs such as Oxfam, professionalised Peruvian NGOs, campaigning organisations, sustainable development organisations, indigenous associations and peasant associations. Researching across these different geographical locations thus provides an opportunity to analyse how some of the inherent diversity within 'global civil society' plays out within and impacts on a specific field of global governance.

In total, I spent over five months in Geneva, where I interviewed thirty individuals, including officials working in the WTO Secretariat, national delegates to the WTO with a particular interest and involvement in issues relating to the TRIPS Agreement, traditional knowledge and biodiversity, officials working in the South Centre, an intergovernmental organisation that serves as something of a filter and contact point between civil society and government officials, and the World Intellectual Property Organisation (WIPO), and NGO directors and researchers. I spoke to staff in NGOs that have been publicly active on issues relating to intellectual property policy and the protection of traditional knowledge and biodiversity, as well as staff in a number of NGOs that have not, but whose organisational briefs and stated field of interest include similar issues, in order to be able to examine reasons for non-interaction and non-involvement in this field as well as experiences of interaction. I also participated, wherever possible, in public events on relevant themes, including four of the WTO's annual Public Forums (from 2007 to 2010), a workshop on Intellectual Property (IP) enforcement in July 2008, and the Geneva Trade and Development Symposium, a three-day event organised alongside the Seventh WTO Ministerial Conference held in Geneva in 2009.

I spent another five months in Peru, and interviewed forty individuals in four different locations: Lima, Iquitos in the Peruvian Amazon, and Cusco and Puno in the Peruvian Andes. These included government officials working in the Ministries of External Trade (MINCETUR) and Foreign Affairs and the Institutes for Intellectual Property (INDECOPI) and Indigenous, Amazonian and Afroperuvian Peoples (INDEPA), government officials and NGO representatives involved in a government-sponsored project against 'biopiracy', freelance researchers, and directors and researchers in different types of NGO, indigenous associations and other civil society organisations. I also attended an International Workshop on Genetically Modified Organisms and Biopiracy in Cusco, Peru in April 2009, and the IV Continental Summit of Indigenous Peoples and Nationalities of Abya Yala in Puno, Peru in May 2009. I identified potential interviewees in each location using internet searches and snowballing, and continued interviewing and contacting new research participants until what Mike Crang and Ian Cook call 'theoretical saturation' was reached. As they put it, '[w]ithin any interest group, only a relatively small number of discourses may be used, in various combinations, to explain certain events, attitudes and so on' (2007: 15). I thus continued seeking out and contacting additional participants until empirical details and patterns of discourse had been repeated by a number of interviewees, and consequent interviews had failed to yield new details or narratives.

The 'zones of discourses' and 'politics and ecologies of knowledge' I sought to explore throughout this fieldwork were those that relate to the sphere of activity that many

refer to as 'global civil society', and to global debates about trade, intellectual property policy, traditional knowledge and biodiversity. Paying attention to the knowledges, rationalities and competing perspectives on these zones of discourses in different locations makes it possible to examine how frameworks of meaning extend or do not extend across different parts of 'global civil society'. It also makes it possible to analyse the translations and tensions, connections and disconnections that exist between different geographical and social locations. This multi-sited approach thus also allows data to be generated and analysis to be conducted that captures more of the complexity and diversity of 'global civil society' and the role it plays in global governance than many of the existing accounts discussed in Chapter One.

### *Ethical Considerations*

Although the use of ethnographic research methodology is motivated in part by ethical considerations, as it represents an approach to studying the social world which values and can bring to light perspectives and voices that can otherwise be marginalised in policy debates and academic discourse, it also generates its own set of ethical concerns. The more sustained, face-to-face interaction that ethnographic research entails places ethnographic researchers in a position where they have access to much more potentially sensitive information and build more personalised relationships with research participants than in other types of social research. Ethnographic researchers thus need to take particular care to ensure that research participants always have sufficient information about the research project in which they are involved, to enable them to decide whether they wish to participate or not, and to ensure that potentially sensitive information is not used in a harmful way.

Like the American Anthropological Association (AAA), I understand a researcher's primary ethical responsibility to be to the individuals and communities who participate in the research (AAA 1998: 2; see also Madison 2005: 111). Throughout the process of making contact with research participants and carrying out interviews and observation, I was thus open and transparent about the purposes of the study, my plans for publication and dissemination, and the sources of funding that support it (Madison 2005: 111). I was also willing to discuss my research aims and objectives and my emerging theories and impressions with research participants in as much detail as they wished, and prepared to have these theories and impressions challenged and questioned. In this way, I sought to enact an anthropological understanding of informed consent as a dynamic and continuous process (AAA 1998: 3), achieved through ongoing discussion with research participants about the nature and purposes of the research. Although these steps cannot completely neutralise the power dynamics that underlie all



research encounters, they can at least ensure that research participants are given space and sufficient information to decide how and whether they wish to participate in the research, and to challenge and question my assumptions and theories if they feel this is appropriate. I also gave research participants the opportunity to tell me whether they wish their involvement in the research to be acknowledged or not (*ibid.*: 3), and to veto the inclusion of specific details or information if they felt this was necessary. Research participants have thus not been identified directly in this thesis, as a number of individuals requested anonymity. When I include direct quotations and examples provided by interviewees, I have given enough background information for readers to situate and make sense of the comments, but not enough to identify specific individuals.

Other ethical considerations emerge in the process of analysing, developing theories and writing about the impressions, accounts and perspectives shared in the course of ethnographic research. As D. Soyini Madison has put it, 'what we say and write about others has material effects ... as ethnographers, our acts and our words have implications beyond ourselves and are part of a larger web of human connections' (2005: 90-91). It is here that questions of power and representation most come into play, and the ethnographic researcher must take particular care to acknowledge the processes and rationale that led to the development and presentation of particular arguments and lines of analysis. It is thus important to recognise that the theories, analysis and arguments developed in this thesis are based on my interpretations of the accounts, perspectives and opinions that research participants have shared with me, and thus 'filtered through [my] own experience' (O'Reilly 2005: 223). They are grounded in research participants' experiences, but are ultimately shaped by my own interpretations, theoretical orientation and decisions I have made about which material to incorporate into my analysis and how best to interpret it. As Julian Eckl has noted:

The demand for engagement in a dialogue with 'the field' not only requires the researcher to be willing to learn from the people studied and possibly even to question his/her research project; it also confronts him/her with the difficult task of deciding what voices to listen to; for there is obviously no such thing as 'the field' in the sense that the researcher would face a homogeneous group with common interests.

(2008: 190)

The arguments developed and the emphasis placed on particular processes and their implications are a result of my own engagement with the issues raised and experiences shared in the research interviews, and will not necessarily be shared by all those who participated in this research. I am thus not claiming to 'represent' the views or experiences of my research participants; what I present, rather, is a theoretically-driven account of the field of civil society-WTO interactions which is grounded in the concrete, situated experiences and perspectives of those who have participated in this enquiry.

## Conclusion

In this chapter, I have developed and presented a theoretical and methodological approach to studying the role of civil society in global governance which seeks to overcome some of the limitations and erasures present in existing theories and accounts of the role played by civil society in global governance. Drawing mainly on practice-oriented readings of governmentality theory and ethnographic research methodology as developed and applied by cultural and social anthropologists, I have presented an approach which, in conceptualising the spaces in which interaction takes place between civil society and the WTO as a Bourdieusian field, produced in practice and governed by its own rationalities and technologies, is able to capture some of the ways in which power is implicated in civil society's involvement in global governance. I have also argued in favour of researching this field of civil society-WTO interaction using a multi-sited ethnographic methodological approach, which is sensitive to local differences, situated knowledges and the ecologies and politics of knowledge as they manifest themselves and play out across this field, and which, through juxtaposing geographical and social locations, can capture the diversity of ways in which civil society organisations are implicated in or excluded from this field of global governance. The theoretical and methodological approach developed is thus intended to facilitate an examination of the relationship emerging between the WTO and civil society that is sensitive to the differences and tensions that exist between the different organisations understood to be part of 'global civil society', and that helps explore what makes some parts of this 'global civil society' more visible, influential and thus more involved in global governance than others.

# Chapter Three

## TRIPS, Traditional Knowledge and Biodiversity: Overview of the Issues

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In this chapter, I present an overview of the WTO's TRIPS Agreement, the concerns it has provoked regarding the ways in which so-called 'traditional knowledge' and 'biodiversity' have been incorporated into the agreement, and the debates that have been taking place both inside and outside the WTO around these issues. These debates encompass themes such as the balance of rights and obligations that should be present in intellectual property law, the most appropriate way to conceptualise the relationship between humans and the natural world, and the nature of knowledge and intellectual endeavour. These issues are complex and multi-faceted, and have been examined by individuals and organisations around the world, including government officials, journalists, academics and civil society organisations in the Global North and South, as well as other international organisations (see e.g. GRAIN and Kalpavriksh 2002: 13-16; Halbert 2005: 163; May and Sell 2006: 195-197; Ragavan 2001: 54-57; Sahai 2004: 61). What we might call the 'TRIPS-traditional knowledge-biodiversity debates' are embedded in a broader transnational conversation about intellectual property, traditional knowledge and biodiversity and moves to incorporate them into structures of global governance.<sup>15</sup>

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<sup>15</sup> There are, for example, debates taking place on these issues in a number of other international organisations, including the World Intellectual Property Organisation (WIPO), the Convention on Biological Diversity (CBD) and the Andean Community (CAN). The issues have also appeared in bilateral trade agreements, such as the Peru-US Free Trade Agreement signed in 2006.

The chapter is divided into three sections. In the first, I present an overview of the TRIPS Agreement, the contested assumptions and principles underpinning it, and explain what is meant by 'traditional knowledge' and 'biodiversity'. In the second, I outline the work that has been carried out by the TRIPS Council, the WTO body charged with administering and consider negotiating modifications to the TRIPS Agreement, on the subject of traditional knowledge and biodiversity, and highlight some of the points of tension and disagreement between WTO members on these issues. In the third, I identify what can be considered the main strands of 'civil society' debate on issues relating to intellectual property, traditional knowledge and biodiversity. These issues have been approached from a variety of theoretical, ideological and practical perspectives, some of which accept the underlying assumptions of Western intellectual property law, while others challenge them.

## TRIPS, Traditional Knowledge and Biodiversity

The TRIPS Agreement is one of sixty agreements and decisions that were signed at the end of the so-called Uruguay Round of multilateral trade negotiations that took place between 1986 and 1994,<sup>16</sup> the result, according to Bernard Hoekman and Michel Kosteci, of 'a trade-off made between IPRs [intellectual property rights] and the rest of the Uruguay Round agenda' (2001: 298). The agreement came into force along with the WTO itself on 1 January 1995, and is, according to the WTO, 'to date the most comprehensive multilateral agreement on intellectual property'.<sup>17</sup> All WTO members are required to ensure their intellectual property regimes conform to a number of standards set out in the agreement, although so-called 'Least Developed' countries have been granted a transition period of up to 20 years to set up appropriate systems and procedures.<sup>18</sup> The agreement specifies the minimum standards of protection that member governments are required to provide to different types of intellectual property, including patents, copyrights, trademarks, geographical indications, industrial designs, trade secrets and test data (Articles 9-40), as well as the enforcement procedures that are expected to be in place (Articles 41-61).<sup>19</sup> It also establishes that any concerns about non-fulfilment of TRIPS obligations by WTO members can be pursued through the WTO's Dispute Settlement Mechanism (Articles 63-64).

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<sup>16</sup> WTO (no date), 'WTO Legal Texts', available on-line: [http://www.wto.org/english/docs\\_e/legal\\_e/legal\\_e.htm](http://www.wto.org/english/docs_e/legal_e/legal_e.htm).

<sup>17</sup> WTO (no date), 'Overview: the TRIPS Agreement', available on-line: [http://www.wto.org/english/tratop\\_e/trips\\_e/intel2\\_e.htm](http://www.wto.org/english/tratop_e/trips_e/intel2_e.htm).

<sup>18</sup> For a list of 'Least Developed Countries' that are currently members or seeking membership of the WTO, see: [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org7\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/org7_e.htm).

<sup>19</sup> The text of the TRIPS Agreement is available on-line: [http://www.wto.org/english/docs\\_e/legal\\_e/27-trips.pdf](http://www.wto.org/english/docs_e/legal_e/27-trips.pdf).

The TRIPS Agreement is underpinned by a number of principles and assumptions, some of them explicitly recognised and presented as evidence of fairness and good practice by the WTO, some of them more implicit. The WTO tends to present TRIPS as embodying the core WTO principles of 'national treatment' (the obligation to treat nationals of any country in the same way as nationals of the country) and 'most favoured nation treatment' (the obligation to treat nationals of all WTO member states equally as well as nationals of a hypothetical 'most favoured nation'), as the agreement requires member governments to offer the same level of protection to the 'intellectual property' of both nationals and non-nationals.<sup>20</sup> TRIPS is also presented as part of a package of WTO measures that ensure fairness and openness in international trade, through enforcing the 'reduction of distortions and impediments to international trade', and 'ensuring that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade'.<sup>21</sup>

This presentation of TRIPS as reducing 'distortions' and 'impediments' to legitimate trade relies on a number of more implicit assumptions, such as the idea that free international trade is always desirable, and that differences in the type and level of intellectual property protection provided by WTO members distort and discourage free trade. This discursive linking of intellectual property protection and free trade is regarded by many as one of the most significant and troubling aspects of the TRIPS Agreement (e.g. Drahos with Braithwaite 2002: 36; Barwa and Rai 2003: 96). Other implicit assumptions include the similarly contested notion that ideas, innovations and discoveries can be understood and treated as the private property of individuals or legal entities such as corporations and research institutes (see e.g. May and Sell 2006: 175), and the belief that elements of the natural world such as genes and seed varieties can also be registered and treated as private property.

TRIPS has always been a particularly controversial trade agreement, and has attracted significant scholarly, journalistic, NGO as well as government attention and criticism since it came into force in 1995 (see e.g. Drahos 2004: 6; May 2006: 92; Wolfe 2004: 585). It has been described, for example, as the trade agreement which has caused the South most acute 'collective loss' (Khor 2000), and presented as evidence that the WTO 'favours corporate profit over saving human lives' (Global Exchange 2008: 2). It has also been interpreted as evidence of underlying problems in the decision-making processes in the GATT and WTO, and used by civil society actors and other critics, as one of my interviewees, the director of a Geneva-based NGO, put it, as 'a lever for a larger issue',

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<sup>20</sup> WTO (no date), 'Overview: the TRIPS Agreement', [http://www.wto.org/english/tratop\\_e/trips\\_e/intel2\\_e.htm](http://www.wto.org/english/tratop_e/trips_e/intel2_e.htm). See also May 2006: 95.

<sup>21</sup> *ibid.*

which was 'to show how opaque and secretive these GATT negotiations are and how ... the right constituencies are not getting totally informed'. According to the director of another Geneva-based NGO, 'it's one of these things that in retrospect I think was a serious mistake. I think it undermined the political acceptance of the WTO in a very bad way. And it really is a sort of neoliberal thinking at its worst. And so I think that TRIPS was very unfortunate for the trading system'.

Alongside general concerns about the lack of transparency surrounding the GATT negotiations, the logic of private ownership that TRIPS embodies and the balance of rights it therefore protects, more specific sets of concerns have also emerged, including the TRIPS-traditional knowledge-biodiversity debates.<sup>22</sup> Traditional knowledge, in this context, refers to the 'outcomes' of 'the practices of indigenous groups' (Drahos 2004: 6), particularly those that relate in some way to the natural world. Other terms used to describe this category of knowledge include 'indigenous knowledge', 'folklore', 'indigenous intellectual property' and 'traditional ecological knowledge' (*ibid.*: 6).<sup>23</sup> Concerns about the impact of Western intellectual property regimes on traditional knowledge were already being expressed in the South in the early 1990s (interviews with an Indian delegate to the WTO and a representative of Third World Network; see also Dutfield 2000: 278). Northern interest in these issues grew in the late 1990s, as a number of cases of 'misappropriation' of traditional knowledge by North American, European and Japanese companies came to light, such as the granting of a patent on basmati rice to the Texan company RiceTec by the United States Patent Office in 1997 (see e.g. May and Sell 2006: 193), and other cases involving turmeric and neem (see e.g. GRAIN and Kalpavriksh 2002: 22; May and Sell 2006: 195; Ragavan 2001: 11-12). Critical legal scholars began to analyse and criticise the TRIPS Agreement for its bias against non-Western forms of knowledge (e.g. Correa 2001, Dutfield 2000, Gervais 2003). Other commentators began to develop and use the concepts of 'biopiracy' and 'biocolonialism' to refer to this patenting of Southern genetic resources by Northern corporations or research institutes (see e.g. Halbert 2005: 139), and to critique Western intellectual property law for its blindness to traditional knowledge and biodiversity. According to Vandana Shiva, a scholar-activist from India:

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<sup>22</sup> Others include debates about TRIPS and public health, which culminated in an amendment to the TRIPS Agreement in 2003 which permits WTO members to issue compulsory licences so as to be able to produce generic versions of patented drugs for export to countries who declare 'public health emergencies' (see [http://www.wto.org/english/tratop\\_e/trips\\_e/implem\\_para6\\_e.htm](http://www.wto.org/english/tratop_e/trips_e/implem_para6_e.htm)), and more recently, debates about TRIPS and food sovereignty (see e.g. Rajotte 2008), and IPRs and climate change (see e.g. Abbott 2009).

<sup>23</sup> According to Saskia Vermeylen and her co-authors, using the term 'traditional knowledge' can also carry 'particular political messages, including criticizing Western approaches to development, protecting the environment of a particular group, and highlighting an exploitative Western stance toward nature' (2008: 204).

[T]he old colonial assumption of “*Terra Nullius*” or the empty earth has been replaced by empty life – plants, animals, micro-organisms and humans become “inventions” when their knowledge is discovered by Western science or Western commercial interests, even if this knowledge has existed for centuries in indigenous cultures.

(2000: 503; see also Kihwelo 2005: 349)

Interest in these themes reached something of a peak in 2002 to 2003, particularly in Geneva, where regular strategy and discussion meetings took place involving NGOs such as QUNO, CIEL and Oxfam, inter-governmental organisations such as the South Centre, national delegates to the WTO and other invited experts (see also Matthews 2007: 1385). During this period, detailed research papers were commissioned from academics and thinktanks around the world, and Southern delegates in particular worked on developing joint negotiating strategies and positions in response to concerns about the impact of TRIPS on Southern genetic resources (interviews with national delegates to the WTO and representatives of Geneva-based NGOs). Debates have quietened down considerably in Geneva since then, as discussions in the TRIPS Council on the issues have reached something of an impasse, and NGOs and national delegates have focused more on the ways in which TRIPS is being enforced globally (see e.g. ICTSD 2009; Seuba 2009, 2010), and on analysing developments in WIPO’s Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC).<sup>24</sup> In Peru, however, civil society organisations are still examining the links between Western intellectual property policy, traditional knowledge and biodiversity, and developing projects and proposals that seek to protect traditional forms of knowledge in the face of so-called biocolonialism or misappropriation by Western scientists and corporations.

## TRIPS Council Work on Traditional Knowledge and Biodiversity

The TRIPS Council, the WTO body charged with monitoring and discussing potential modifications to the TRIPS Agreement, has been discussing issues relating to traditional knowledge and biodiversity since the late 1990s. A mandate to examine some of these issues is built into one of the clauses of the agreement, Article 27.3(b). Article 27.3(b)

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<sup>24</sup> Various events have taken place on these issues in the past two years, including a workshop on ‘Foresight into the Future of WIPO’s Development Agenda’, March 18-20 2010, in Nyon, Switzerland (see <http://ictsd.org/i/events/dialogues/71668/>) and a dialogue on ‘IP Offices and the Implementation of the WIPO Development Agenda: Challenges and Opportunities’, 18 September 2009, in Geneva (see <http://www.iprsonline.org/ictsd/Dialogues/2009-09-18/Final%20document%20IP%20Office%20event.pdf>)

requires WTO members to provide some form of intellectual property protection to plant varieties, either through patents or a so-called *sui generis* system, which has led to it being described as 'the most controversial clause of the entire WTO agreement' (Sahai 2004: 60). The article itself states that '[t]he provisions of this subparagraph shall be reviewed four years after the date of entry into force of the WTO Agreement'.<sup>25</sup> TRIPS came into force in 1995, and the review consequently began in 1999<sup>26</sup> with the submission of reports of national experiences and proposals about how and whether to modify Article 27.3(b) from WTO members.<sup>27</sup> Topics and concerns raised in the course of the review process have included the issue of whether TRIPS should oblige members to provide patents on forms of plant and animal life, the extent to which invented life-forms should be patentable, concerns about Northern corporations and research institutes applying for patents on traditional knowledge and genetic resources from the South, and the potential conflict between TRIPS and the CBD.<sup>28</sup> The review of Article 27.3(b) has never been completed, and is still formally part of the ongoing business of the TRIPS Council.

Further instructions to examine issues relating to Article 27.3(b) and what have come to be known as the 'TRIPS-CBD issues' came in the shape of the 2001 Doha Ministerial Declaration. During the Fourth WTO Ministerial Conference in Doha, Qatar in 2001, a number of trade ministers raised concerns about TRIPS, its treatment of traditional knowledge, plant and human life, and about conflicts between the agreement and the UN's Convention on Biological Diversity. These concerns were incorporated into the Doha Ministerial Declaration, which serves as a framework for subsequent work and negotiations in the WTO. Paragraph 19 of the Doha Declaration<sup>29</sup> instructs the TRIPS Council:

in pursuing its work programme under the review of Article 27.3(b) ... to examine inter alia the relationship between the TRIPS Agreement and the CBD, the protection of traditional knowledge and folklore and other relevant new developments raised by members pursuant to 71.1.<sup>30</sup>

<sup>25</sup> The full text is available here: [http://www.wto.org/english/docs\\_e/legal\\_e/legal\\_e.htm#TRIPs](http://www.wto.org/english/docs_e/legal_e/legal_e.htm#TRIPs)

<sup>26</sup> WTO (no date), 'TRIPS: Reviews, Article 27.3(b) and Related Issues. Background and the Current Situation', [http://www.wto.org/english/tratop\\_e/trips\\_e/art27\\_3b\\_background\\_e.htm](http://www.wto.org/english/tratop_e/trips_e/art27_3b_background_e.htm).

<sup>27</sup> see WTO Secretariat note IP/C/W/368/Rev.1/Corr.1 for a list of documents submitted by members. Available on-line: [http://www.wto.org/english/tratop\\_e/trips\\_e/art27\\_3b\\_e.htm](http://www.wto.org/english/tratop_e/trips_e/art27_3b_e.htm).

<sup>28</sup> See WTO (no date), 'TRIPS: Reviews, Article 27.3(b) and Related Issues. Background and the Current Situation', [http://www.wto.org/english/tratop\\_e/trips\\_e/art27\\_3b\\_background\\_e.htm](http://www.wto.org/english/tratop_e/trips_e/art27_3b_background_e.htm) for further details.

<sup>29</sup> The full text of the Doha Ministerial Declaration is available here:

[http://www.wto.org/english/thewto\\_e/minist\\_e/min01\\_e/mindecl\\_e.htm](http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm).

<sup>30</sup> 71.1 is another article of the TRIPS Agreement which mandates the TRIPS Council to review the implementation of the whole TRIPS Agreement after a transitional period of indeterminate length has passed.



Paragraph 19 also reminds the TRIPS Council that the review of Article 27.3(b) should 'be guided by the objectives and principles set out in articles 7 and 8 of the TRIPS Agreement', which state that intellectual property rights should contribute to the technology transfer and social and economic welfare (TRIPS Article 7), and should 'fully take into account the development dimension' (TRIPS Article 8). Paragraph 12 of the Doha Declaration also provides a mandate for discussion of the relationship between TRIPS and the CBD, by instructing the various WTO Councils to continue working on all remaining 'implementation-related issues and concerns raised by members', which includes the TRIPS-CBD issues. With the Doha Declaration, examination of the relationship between TRIPS and the CBD and the protection of traditional knowledge and folklore thus became part of the TRIPS Council's formal work programme, with a special mandate or instruction to ensure that the so-called 'development dimension', as well as social and economic welfare more broadly, are considered in any discussions. At the time of writing (May 2011), discussions in the TRIPS Council on the relationship between TRIPS and the CBD and the protection of traditional knowledge and folklore have still not reached a conclusion, and the issues remain part of the formal ongoing work of the Council (see e.g. ICTSD 2011a).

The TRIPS Council is formally composed of representatives of all WTO member states,<sup>31</sup> and chaired on a rotating basis by one of these representatives (the current chairperson is from Paraguay). Meetings of the TRIPS Council are attended by national delegates to the WTO and, on occasion, other experts in intellectual property or related matters invited to attend as part of national delegations (interview with the director of a Peruvian NGO), as well as staff from the WTO's Intellectual Property Division and other international organisations that have been granted observer status, such as the World Intellectual Property Organisation (WIPO), the Food and Agriculture Organisation (FAO) and the United Nations Conference on Trade and Development (UNCTAD). Work in the TRIPS Council proceeds through WTO members submitting position papers and reports on matters of concern, and negotiations taking place in line with the instructions and mandate provided by formal agreements (in this case, Article 27.3(b) of the TRIPS Agreement and Paragraphs 12 and 19 of the Doha Declaration). Submissions to the TRIPS Council relating to traditional knowledge and biodiversity and the so-called TRIPS-CBD issues over the past decade can be grouped into three broad categories: those that contest the notion that TRIPS should require member states to award and recognise patents over any form of life; those that advocate modifying TRIPS so as to better protect traditional knowledge and biodiversity; and those that argue that no changes to the agreement are currently necessary.

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<sup>31</sup> see WTO (no date), 'The Work of the TRIPS Council' ([http://www.wto.org/english/tratop\\_e/trips\\_e/intel6\\_e.htm](http://www.wto.org/english/tratop_e/trips_e/intel6_e.htm)) for further details.

Member submissions that contest the idea that TRIPS should require states to award and respect patents on forms of life make up the smallest of these three categories. It is mainly countries that make up the African Group in the WTO that have contested the requirement to award patents on forms of life, although an earlier proposal from India also contains elements of this position (see for example IP/C/W/161 para. 7),<sup>32</sup> as does the most recent submission from Bolivia, circulated in February 2010 (IP/C/W/545). The main argument, in its strongest form, is that '[p]atents on life forms are unethical' and 'contrary to the moral and cultural norms of many societies in Members of the WTO', and, as such, should not be required by the TRIPS Agreement (African Group 2003, IP/C/W/404). This position, although very similar to many of the viewpoints expressed within civil society debates in the early 2000s, has not been taken particularly seriously in the TRIPS Council, and has never really been part of the formal debate. The African Group now formally support the second category of submissions, which advocate modifying TRIPS so as to better protect traditional knowledge and genetic resources as forms of intellectual property.

Submissions advocating modifications to the TRIPS Agreement have been made by the highest overall number of countries, including Brazil, China, Colombia, Cuba, Ecuador, India, Indonesia, Kenya, Pakistan, Peru, Philippines, Thailand, Turkey and Venezuela. These countries have worked in increasingly close collaboration to develop arguments and evidence in support of modifications. From an Indian submission in 1999 which first raised the possibility of requiring 'disclosure of the country of origin of the biological resource and associated knowledge' and 'equitable sharing of benefits' (IP/C/W/161 para. 7), to the draft modalities for ministerial negotiations drawn up in July 2008 in an attempt to move Doha Round negotiations forward (TN/C/W/52),<sup>33</sup> proposals in this category have increasingly coalesced around the idea that TRIPS, in order to help prevent misappropriation of traditional knowledge and genetic resources, needs to be reformed in three ways. It is argued that TRIPS should require patent applicants to, firstly, disclose the origin of any traditional knowledge or genetic resources used in the process of developing a new product to enable national patent offices to determine

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<sup>32</sup> These codes are the document identification codes allocated by the WTO Secretariat to position papers and other formal submissions to the various WTO Councils, and can be used to search for the documents in the WTO's on-line document library: [http://docsonline.wto.org/gen\\_search.asp?searchmode=simple](http://docsonline.wto.org/gen_search.asp?searchmode=simple). The code 'IP', for example, indicates that the submission relates to 'Intellectual Property'; 'TN'-coded documents relate to 'Trade Negotiations'.

<sup>33</sup> The sponsors were: Albania, Brazil, China, Colombia, Ecuador, the European Communities, Iceland, India, Indonesia, the Kyrgyz Republic, Liechtenstein, the Former Yugoslav Republic of Macedonia, Pakistan, Peru, Sri Lanka, Switzerland, Thailand, Turkey, the ACP [African, Caribbean and Pacific] Group and the African Group. The ACP Group is comprised of 79 countries ([http://www.wto.org/english/news\\_e/pres03\\_e/pr358\\_e.htm](http://www.wto.org/english/news_e/pres03_e/pr358_e.htm)), and the African Group of 41 countries ([http://www.wto.org/english/news\\_e/news05\\_e/cotton\\_19april05\\_e.htm](http://www.wto.org/english/news_e/news05_e/cotton_19april05_e.htm)), although some countries are members of both the ACP and African groups.

whether misappropriation of knowledge and resources or has taken place; to, secondly, obtain and demonstrate 'prior informed consent' from the relevant authorities in the country of origin to export and use the traditional knowledge and genetic resources in question; and to, thirdly, demonstrate that fair and equitable benefit-sharing arrangements have been put in place so that source communities receive a share of any profits accrued on the basis of their knowledge.<sup>34</sup> According to national delegates I interviewed, over 110 countries (out of a total membership of 153) now formally support modifying TRIPS so that it requires disclosure of origin and includes reference to prior-informed consent and benefit sharing, making it the dominant position in the TRIPS Council at present.

Submissions that dispute the need to modify the TRIPS Agreement have been made by countries such as Australia, Canada, Japan, New Zealand and the United States. Key ideas presented include the argument that there is no inherent conflict between TRIPS and the CBD;<sup>35</sup> that there is little evidence that national intellectual property systems are ineffective at preventing and dealing with misappropriation of traditional knowledge and genetic resources; and that until there is better understanding and evidence of the problems, introducing additional international legislation is inappropriate.<sup>36</sup> It has also been argued that other mechanisms, such as increased cooperation and information-sharing between national patent offices or the creation of databases, are a more effective way of preventing and dealing with misappropriation of traditional knowledge and genetic resources than modifying the TRIPS Agreement.<sup>37</sup>

Apart from the first category of submissions, members' proposals and positions in the TRIPS Council, unlike some of the strands of the civil society debates discussed in the

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<sup>34</sup> See IP/C/M/24 para. 81, IP/C/M/25 paras. 78 and 87, IP/C/M/27 paras. 122 and 132, IP/C/M/28, paras. 135, 144 and 165, IP/C/M/29 paras. 146 and 148, IP/C/M/30 para. 169, IP/C/M/32 paras. 128 and 136, IP/C/M/33 para. 121, IP/C/M/36/Add.1 paras. 203 208, 211, 212, 214, 217, 219, 227, 228 and 233, IP/C/M/37/Add.1 paras. 231, 229, 237 and 239, IP/C/M/38 paras. 230 and 239, IP/C/M/39 para. 126, IP/C/M/40 paras. 76-79, 81, 82, 84, 102, 107 and 121, IP/C/M/42 paras. 101, 105, 113, 114 and 119, IP/C/M/45 para. 25, IP/C/M/46 paras. 57, 67 and 81, IP/C/M/47 paras. 49, 51, 57, 63, 68, 79 and 80, IP/C/M/49 paras. 86-90, 134-146, 154, and 159, IP/C/W/163, IP/C/W/195, IP/C/W/198, IP/C/W/206, IP/C/W/228, IP/C/W/356, IP/C/W/403, IP/C/W/404, IP/C/W/429/Rev.1, TN/C/W/52 para. 4.

<sup>35</sup> See TRIPS Council Communications IP/C/M/25 para. 93, IP/C/M/26 para. 77, IP/C/M/36/Add.1 para. 222, IP/C/M/37/Add.1, para. 232, IP/C/M/38 para. 236, IP/C/M/39 para. 137, IP/C/M/40 paras. 100, 101 and 115, IP/C/M/42 paras. 104 and 109, IP/C/M/43 para. 55, IP/C/M/46 paras. 52, 53, 61 and 62, IP/C/M/47 paras. 55, 66 and 69, IP/C/M/48 paras. 84 and 86 and Secretariat Report IP/C/W/368/Rev.1 paras. 8 and 11.

<sup>36</sup> See TRIPS Council Communications IP/C/M/40 para. 101 and 115, IP/C/M/46 paras. 55, 61 and 65, IP/C/M/47 paras. 54 and 66 and Secretariat Report IP/C/W/368/Rev.1 para. 11.

<sup>37</sup> See TRIPS Council Communications IP/C/M/40 paras. 101 and 115 Secretariat Report IP/C/W/368/Rev.1 para. 11.

following section, largely take Western intellectual property concepts and assumptions as a framework for discussion. The main source of tension and disagreement within the TRIPS Council relates to the question of whether modifications that also work within the logic of Western intellectual property regimes are necessary. At the time of writing, countries that support modifications to TRIPS are still trying to gather additional evidence and strategic support in an attempt to convince their opponents to accept the suggested changes. The outcome of discussions on TRIPS, traditional knowledge and biodiversity in the WTO is not simply dependent on convincing opponents in the TRIPS Council of the benefits or necessity of any particular position, however. The so-called TRIPS-CBD issues are just one of over 20 issues that are being discussed as part of the Doha Round negotiations, and all members must agree on all issues as a 'single undertaking' for the round to be concluded.<sup>38</sup> The outcome of this work on traditional knowledge and biodiversity is thus also dependent on the outcome of other discussions, as member governments seek to optimise the benefits gained and minimise the concessions made across the whole package of negotiating issues.

## Main Strands of Civil Society Debate

While discussions in the TRIPS Council on TRIPS, traditional knowledge and biodiversity have focused increasingly narrowly on proposals to modify TRIPS so as to require disclosure of origin, prior informed consent and benefit-sharing, civil society debates on these issues have been much broader and more complex. This is particularly true in so-called 'mega-diverse' countries with large indigenous populations who identify themselves as targets of biopiracy or misappropriation of knowledge, such as Brazil, India and Peru (see Halbert 2005: 153-161). Although some strands of these civil society debates overlap with and feed into discussions in the TRIPS Council, others challenge and question many of the assumptions that have come to be taken for granted by national delegations to the WTO, including those who consider themselves to be representing the interests of their national 'civil societies'.

One of the strands of debate that most challenges the discussions and work taking place in the TRIPS Council centres around the notion that neither traditional knowledge nor biodiversity are things that, from a moral perspective, can be privately owned, and as such, have no place in Western intellectual property systems. The argument has taken a variety of forms and has been approached from a variety of ideological and epistemological perspectives. In its simplest form, the argument states that patents on

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<sup>38</sup> Many commentators think this is looking increasingly unlikely to happen soon (see e.g. ICTSD 2011a, 2011b, 2011c).

forms of life are morally wrong, and that the TRIPS Agreement should not oblige member states to award and recognise patents on any form of life (this mirrors the position presented by the African Group, India and, more recently, Bolivia in the TRIPS Council). As a representative of an international NGO with a base in Geneva explained:

We take a position that there should be a limit to what you can patent and what you cannot patent. So we have a position, animals, plants, even microorganisms, we campaign to amend the TRIPS Agreement to say, why should you allow microorganisms to be patented ... in fact we're talking to some of our NGO friends about the need to actually revive the campaign on no patents on life.

More complex versions of the argument have been articulated from Marxist, post-colonial, environmentalist and indigenous perspectives, of which there are many – as Deborah Halbert has noted, 'it is a grave mistake to believe that Indigenous groups speak with a single voice and thus there is a politics to who is recognised as representing a specific Indigenous group for the purposes of negotiation' (2005: 144). Marxist versions of the argument, for example, read recent moves to incorporate traditional knowledge and biodiversity into Western intellectual property regimes as an attempt to commoditise new objects and arenas, as part of a larger project to facilitate the expansion of global capitalism.<sup>39</sup> Bronwyn Parry, for example, characterises the TRIPS Agreement as a 'most effective instrument for disciplining and monopolising objects and phenomena that have, until now, remained outside the grasp of global capital' (2002: 699), and views the agreement as one of a number of global regulatory regimes that 'facilitate the pursuit of particular interests and sustain relations of domination' (*ibid.*: 698). David Harvey takes the argument a stage further: he sees TRIPS as a mechanism of 'accumulation by dispossession' (2005: 147), which feeds global capitalism by opening up new areas and possibilities for capitalist accumulation through dispossessing communities of their existing rights and property. As he argues:

The emphasis upon intellectual property rights in the WTO negotiations (the so-called TRIPS Agreement) points to ways in which the patenting and licensing of genetic material, seed plasma, and all manner of other products can now be used against populations whose practices had played a crucial role in the development of those materials. Biopiracy is rampant and the pillaging of the world's stockpile of genetic resources is well under way to the benefit of a few large pharmaceutical companies.

(2005: 147-8)

Discussions in the TRIPS Council which focus on proposals to modify TRIPS so as to require patent applicants to disclose the origin of traditional knowledge and genetic

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<sup>39</sup> It has also been argued that the types of IPRs enshrined in TRIPS are themselves a product of the history of capitalist expansion in Europe (May 2007: 2).

resources used in the development of an invention, or to demonstrate that prior informed consent has been sought and suitable benefit-sharing arrangements have been established, are seen, from this perspective, as unhelpful and in fact further contributing to commoditisation and dispossession. As an interviewee in another Geneva-based NGO put it, 'even if the WTO miraculously listens to all these well-meaning proposals, and adds all these different amendments into the TRIPS Agreement, you'll end up with something that simply legalises the system. Yes, ok, it makes the terms a bit better. But at the same time it's still commodifying, essentially, biodiversity and knowledge.'

Post-colonial versions of the argument share many of the concerns of the Marxist critiques, but focus particularly on the ways in which TRIPS permits practices and behaviours which benefit Western scientists and corporations to the disadvantage of communities and countries in the Global South. They explore the ways, for example, in which TRIPS and Western intellectual property models permit and facilitate the misappropriation or theft of Southern resources and knowledge by Northern capital and interests. Vandana Shiva has argued that Western intellectual property regimes 'facilitate piracy of the indigenous knowledge and biodiversity of Third World countries', and 'make northern countries into the monopoly owners of knowledge, including knowledge that has evolved cumulatively and collectively in indigenous cultures' (2000: 501). She regards patents and intellectual property rights more generally as 'instruments of conquest' (*ibid.*: 501), where '[t]he cloak of reward to inventiveness hides the real object—the control over the global economy' (*ibid.*: 502). P.-F. Kihwelo similarly argues that the TRIPS Agreement 'significantly benefits the multinational companies of the rich North at the expense of indigenous communities of the poor South' (2005: 357), as it fails to recognise traditional forms of knowledge as legitimate, despite them being 'sought after by hook and by crook and stolen to be stored in the citadels of Western European institutions of higher learning and scientific research' (*ibid.*: 347). Interviewees in Peruvian civil society organisations gave numerous examples of traditional knowledge and genetic resources they feel have been stolen or misappropriated by Northern interests. The president of one NGO told me:

Por ejemplo el Perú, todo el mundo sabe que es el centro de origen de la papa. Eso está conocido ahora por todo el mundo. ¿Qué pasaría si el 0.001% de toda la producción de papas a nivel mundial sea proporcionado al país? Este país no tendría la pobreza que tiene en los Andes, donde se ha domesticado estas papas, y de donde provienen todas esas variedades que actualmente existen al nivel mundial.

Peru, for example, everybody knows that Peru is the centre of origin of the potato. Everybody recognises this now. What would happen if 0.001% of the production of potatoes globally was sent to this country? This country would not have the poverty that it has in the Andes, where these potatoes

were domesticated, and where all these varieties come from that now exist around the world.

He also told me about a Scandinavian company that was reportedly granted a patent on a product developed from the breast milk of a woman living in the Amazon region of Peru, and has been able to market and sell the product, without any benefits flowing back to the woman or community where she lives. There is clearly a perception that Western patent systems are unjust and work against the interests of individuals and communities in Peru, based on the profits made by Northern scientists, companies and interests on the basis of communities' knowledge and genetic resources. The assumption that Western intellectual property mechanisms and models are the only way to register and 'protect' traditional knowledge and biodiversity, present in discussions in the TRIPS Council, has also been criticised as reflecting a colonialist mentality and worldview. As Halbert has noted, 'it is important to recognise that Indigenous peoples have developed alternative property models and that, by refusing to recognise alternative and pre-existing property models, Western interests are again engaged in a colonising property grab' (2005: 139).

Indigenous versions of the argument against patents on traditional knowledge and biodiversity tend to be rooted in indigenous cosmology and philosophy, and reflect understandings of nature, knowledge and the role of human beings in relation to the natural world that are radically different to those underpinning Western intellectual property law. Indigenous associations contest, for example, the way in which Western intellectual property law conceptualises knowledge as a series of disconnected units which can be attributed to the intellectual efforts of one individual or legal entity. This conceptualisation does not reflect, they argue, the way in which knowledge is created and transmitted collectively, in connection and collaboration with other individuals, communities and the natural world itself. As Halbert puts it, '[i]ndigenous leaders argue that knowledge is not divided into discrete packages or individual rights, but represents the knowledge of the group as a whole and their connection to the larger world around them' (2005: 159). The way in which Western intellectual property law treats knowledge as an object that can be transferred between owners and thus alienated from its original setting and creators is also seen to be at odds with indigenous customs and traditions (*ibid*: 160). As the director of an indigenous association in the Peruvian Andes explained to me:

Nosotros acá trabajamos con una visión no-patentes, sobre formas de vida. Porque pensamos que, es un argumento también conocido, nosotros pensamos que es correcto, de que el conocimiento tradicional y los recursos asociados con recursos genéticos y biológicos forman una unidad que tú no puedes separar... Eso está en total contradicción o confusión a las patentes de invenciones.

We work here from a 'no patents on forms of life' perspective. Because we think that, it's a well-known argument in fact, we think that the traditional knowledge and resources associated with genetic and biological resources are a unit that can't be separated... It completely contradicts the idea of patents on inventions.

Patents, and the possibility of 'owning' traditional knowledge and elements of the natural world, are thus seen to be completely at odds with traditional ways of conceptualising, creating and sharing knowledge in indigenous communities, and grounds for suspicion about government efforts to protect traditional knowledge and biodiversity through the patent system.

Indigenous opposition to patents and Western intellectual property law more generally also has a strong spiritual element. What Western intellectual property law terms 'traditional knowledge' is frequently understood by the communities or individuals who possess it or use it as something sacred and part of their spiritual and cultural heritage. Indigenous communities in Peru tend to understand their knowledge of the natural world as something which is shared by and itself part of the *pacha mama*, the spiritual entity which represents the Earth. As one NGO programme director explained to me:

En la Amazonía, en la selva, especialmente o básicamente el conocimiento de muchas plantas medicinales está asociado principalmente con la espiritualidad, con su cosmovisión. Entonces el tema de la *pacha mama*, la identidad está también vinculada con varios elementos.

In the Amazon, in the jungle, especially or basically the knowledge of many medicinal plants is mainly associated with spirituality, with their cosmovision.<sup>40</sup> So the theme of the *pacha mama*, the theme of identity is also linked with various elements.

Interviewees in Peru frequently talked about the importance of their Andean cosmovision or worldview ('cosmovisión andina') to their way of understanding and being in the world, and how patents and the Western understandings of nature and property they invoke contradict and violate this cosmovision. In Andean cosmovision, the natural world is considered to be a living entity, with its own spirits and rhythms, which human beings should respect, value and nurture as part of a reciprocal relationship. As the same interviewee put it:

La naturaleza se ve como una cosa viva. Dicen esta es la tierra, pues esta es la *pacha mama*. Esta es nuestra *pacha mama*, nuestra madre. Esta es la que

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40 This is sometimes translated as 'worldview' (e.g. Vidal 2011), but more commonly as 'cosmovision', particularly in anthropological literature on the Andean region as well as in the activist literature (e.g. Gonzales and Gonzalez 2010; Gonzales, Chambi and Machaca 1998; Ishizawa 2006; Marglin 1995).



nos da comida. Nos da vida, nos protege. Entonces por lo tanto hay que reciprocitar, hay que saludar, hay que dar algunos rituales, hay que darle para que ella nos siga dando mayor producción ... Se ve con cariño la naturaleza, la tierra. Así se comportan ellos, con mucho cariño.

They see nature as a living thing. They say this is the earth, this is the *pacha mama*. This is our *pacha mama*, our mother. This is what gives us food. It gives us life, it protects us. So we have to reciprocate, we have to pay homage to it, we have to follow our rituals, we have to give something back so it keeps producing well for us ... They have a lot of affection for nature, for the earth. This is how they act, with a lot of affection.

Knowledge relating to the use or care of biodiversity is regarded as part of this respectful, caring and reciprocal relationship with the natural world, and is closely bound up with particular rituals and other cultural and spiritual practices. Terms like 'traditional knowledge' and 'genetic resources' do little to reflect the way in which indigenous communities understand the practices and customs which carry and transmit their knowledge. The director of a rural development association told me, for example, that the association's primary goal is to: 'fortalecer la cosmovisión andina de los criadores de agrobiodiversidad y los saberes de crianza decimos nosotros, lo que llaman pues este conocimiento tradicional' (to strengthen the Andean cosmovision of those who nurture agro-biodiversity and the know-how relating to these nurturing processes, as we say, what they [legal experts, government officials, international organisations] refer to as traditional knowledge). The vocabulary used reflects an entirely different conception of nature and knowledge to that underpinning Western intellectual property systems. The noun '*crianza*', for example, and the associated verb '*criar*', are not usually applied to plants, but to animals and children, in the sense of 'raising' or 'nurturing' an animal or child. As another interviewee, a non-indigenous journalist and consultant working on issues relating to biodiversity and indigenous rights, told me:

Ellos hablan de la crianza de la naturaleza. No hablan de recursos, sino hablan de crianzas. Cuando te hablan de una planta, te dicen las crianzas. Entonces yo intentaba entender porqué se llama crianza. Y claro, crianza implica respeto, cariño, acompañamiento. Hay una visión holística que yo creo que es parte de esto.

They [indigenous communities] talk about nurturing nature. They don't talk about resources, but they talk about *crianzas*. When they talk to you about a plant, they say *crianzas*. And so I was trying to understand why is it called a *crianza*? And of course, *crianza* implies respect, affection, companionship. There's a holistic vision that I think is part of this.

These debates about spirituality, culture and identity, and the ways in which patents on forms of life and Western intellectual property regimes more generally conflict with

indigenous cosmologies and philosophy, scarcely feature in the TRIPS Council discussions outlined in the previous section, and do not seem to feed into the Peruvian government's position and discussions on traditional knowledge and biodiversity either. This strand of the civil society debate, although prominent amongst indigenous and peasant associations in Peru, has not reverberated in official discourse and debate.

Alongside these strands of thinking that in one way or another challenge the idea that TRIPS should permit private ownership of traditional knowledge and biodiversity, another cluster of debates has focused on questions such as what it means to *protect* traditional knowledge, *what* exactly requires protection and what the *rationale* for this protection is. These debates have focused on a broader array of issues, concerns and possible solutions than the increasingly narrow debates in the TRIPS Council, and have been approached from a greater variety of perspectives and understandings of what protection might entail and what the object of protection should be. A strand of the critical academic debate, for example, has focused on what makes traditional knowledge distinctive as a category of knowledge, and whether patents and Western-style intellectual property regimes can ever be an appropriate instrument with which to protect it. According to Matthias Leistner, Western intellectual property law has a 'built-in bias that protects individual inventions rather than collective developments or even "traditions of innovation"' (2004: 58; see also Dutfield 2000: 274; Vermeylen et al 2008: 202). Traditional knowledge thus tends to fall outside the field of visibility of Western intellectual property regimes, as it is typically generated and shared within and between communities in a collective, fluid and open manner. Scholars have also focused on the tendency in Western intellectual property regimes to conceptualise and treat knowledge as either patentable private property, or part of the intellectual commons and thus freely available (Dutfield 2000: 285), a distinction which leaves traditional knowledge vulnerable, as neither option provides suitable protection to forms of knowledge which are collectively produced but not freely circulated beyond the communities which produce them. The narrow focus of Western intellectual property law has also been criticised for failing to recognise and provide mechanisms to protect many forms of traditional knowledge, including 'spiritual beliefs, methods of governance, languages, human remains and biological and genetic resources in their natural state' (Gervais 2003: 407). These types of concerns, like the spiritual and cultural elements discussed above, have also not been raised or addressed in the TRIPS Council, where discussions have generally proceeded in a way which takes Western intellectual property concepts and frameworks for granted.

Other strands of debate, as well as work carried out by civil society associations and other international organisations, have conceptualised issues relating to the protection

of traditional knowledge and biodiversity in a more complex way than the discussions in the TRIPS Council. While discussions in the TRIPS Council have focused on traditional knowledge relating to biodiversity and so-called genetic resources, and attempts to modify the way in which patents are awarded on this type of traditional knowledge, discussions in WIPO and elsewhere have been much broader in scope. As the director of a Geneva-based NGO put it:

In the TRIPS Agreement what is being sought is very narrow and specific, it's to address the questions around erroneous patents being granted, and to address questions where patents are granted, benefit-sharing, questions around prior informed consent. So it's only in the case where patents are involved. While the larger traditional knowledge question is a larger question about protecting traditional knowledge, where in fact the protection might have nothing to do with patents, it might be a new system of protection, or several types of protection.

Discussions in WIPO have, for example, have included consideration of so-called 'traditional cultural expressions' (TCEs) or 'expressions of folklore' as well as traditional knowledge relating to genetic resources, and official descriptions of the work being carried out in WIPO refer to traditional forms of knowledge as 'cultural assets of indigenous and local communities and their countries'.<sup>41</sup> Indeed, the committee in WIPO charged with examining issues relating to intellectual property law and traditional knowledge is called the 'Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore' (commonly shortened to IGC), reflecting this broader conceptualisation of what it is exactly that needs protecting.

Some legal scholars have also framed debates about intellectual property, traditional knowledge and biodiversity as a cultural protection issue. P.-F. Kihwelo, for example, categorises the protection of what he calls 'indigenous knowledge' as 'a cultural heritage property right which we must correspondingly protect and share equitably in the interest of all humankind' (2005: 348). Craig Borowiak, similarly, characterises the expansion of intellectual property rights into domains such as plant and seed varieties as 'a threat to [the] autonomy and established ways of life' of farmers in developing countries (2004: 512) and 'a major blow to food security and cultural autonomy' (*ibid.*: 520). Concerns about the lack of consideration or recognition of cultural issues in official debates have also been part of indigenous debates in Peru: as one interviewee put it, 'se habla de la Amazonía, de sus recursos, de su gran biodiversidad, pero no se habla nunca de la biodiversidad cultural ni de los conocimientos que tienen esos pueblos' (they talk about the Amazon, about its resources, about its great biodiversity, but they never talk

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<sup>41</sup> See WIPO (no date), 'Traditional Knowledge, Genetic Resources and Traditional Cultural Expressions/Folklore', <http://www.wipo.int/tk/en>.

about cultural biodiversity or the knowledge these peoples have). Such complaints have much in common with the debates about the way in which patents conflict with indigenous culture and spirituality discussed above, as both sets of concerns stem from a sense that cultural difference is not recognised or valued in official discourse and policy relating to indigenous populations.

Given indigenous associations' concerns about the assumptions underpinning Western intellectual property systems, and the value placed on indigenous values, culture and cosmologies in their work on traditional knowledge and biodiversity, it is not surprising that indigenous associations and organisations working with them have developed very different understandings of what it means to protect traditional knowledge and biodiversity than those being discussed in the TRIPS Council. Generally speaking, representatives of these indigenous associations understand protection to mean much more than simply developing and applying appropriate intellectual property instruments (although they are not necessarily opposed to this being part of a broader project to protect knowledge). Protection is understood to involve, for example, activities such as recuperating and revalorising traditional practices, customs and ways of seeing and understanding the world, and ensuring that indigenous forms of knowledge are taught and presented as equally valid as Western forms of knowledge in Peruvian schools and colleges. When I asked one NGO programme director about indigenous communities' concerns about traditional knowledge, he told me that:

En sus agendas sí está presente, justamente se habla en sus agendas, en sus reuniones, de nuestros conocimientos, nuestra sabiduría, nuestras plantas medicinales, hay que recuperar todo lo que son los conocimientos en la salud, por ejemplo. Hay muchas experiencias que por lo menos sí están recuperando, por lo menos en cuanto a la salud, incluso de plantas. Hay médicos, parteras, hay pequeños hospitales, promovido de manera autónoma por ellos. Por ejemplo en Ecuador, hay farmacias de esta naturaleza, hay pequeñas clínicas, en convenio con el estado pues por ejemplo.

It is part of their agenda, in their meetings they do talk about our knowledge, our wisdom, our medicinal plants, we have to recover all our knowledge relating to health, for example. There are many practices they are trying to recover, at least with regards to health and medicinal plants. There are doctors and midwives, there are little hospitals that they've promoted autonomously. For example in Ecuador, there are pharmacies like this, there are small clinics, in agreement with the state.

Protection and defence of traditional knowledge is clearly associated, for this individual and the communities he describes, with practical projects and practices that ensure traditional ways of knowing and using biodiversity are kept alive, and transmitted and

made available to future generations. The president of another indigenous association, when asked about activities being carried out to protect traditional knowledge, told me about projects designed to 'rescatar' (recover) traditional knowledge relating to the use of plants in traditional medicine. The director of a peasants' association in the Peruvian Andes told me about efforts to record traditional agricultural practices and rituals using digital video recorders to ensure this knowledge remains available to future generations. For many indigenous associations, the debate is thus not so much about developing intellectual property mechanisms that can better protect traditional knowledge, but about broader efforts to ensure cultural recognition and validation. As the director of another indigenous association put it, 'esa parte de la cosmovisión indígena tiene que ser legitimada dentro de un sistema legal jurídicamente reconocido' (this indigenous cosmovision must be legitimated within a legal system which is legally recognised): the focus, for her, should not be on trying to incorporate traditional knowledge into the logic of Western intellectual property systems, but on adapting Western intellectual property systems such as TRIPS so that they recognise, value and protect the logics and practices of indigenous cultures.

## Conclusion

Debates about traditional knowledge, biodiversity and the WTO's Trade Related Intellectual Property Rights (TRIPS) Agreement are, as this chapter has tried to show, complex, messy and multifaceted. They have emerged and evolved across multiple settings and venues, including the formal, institutional setting of the WTO's TRIPS Council, as well as countless civil society workshops, meetings and publications, academic publications and government discussions in both the Global North and South. While discussions in the TRIPS Council have focused increasingly narrowly on the question of whether and how the TRIPS Agreement should be modified to require patent applicants to reveal the origin of any traditional knowledge or biodiversity used in their inventions and ensure prior informed consent and benefit-sharing have been arranged, discussions elsewhere have been much broader in scope, and have conceptualised the issues at stake in a number of alternative ways. Key strands of debate have included consideration of how desirable or appropriate it is to allow and encourage patents on forms of life and traditional forms of knowledge, and the negative consequences of making knowledge and biodiversity subject to private property law; discussion of what it means to protect traditional knowledge and biodiversity; and consideration of whether intellectual property law offers the most suitable instruments to protect these collective forms of knowledge and associated genetic resources. It is worth bearing in mind that the perspectives of indigenous communities and indigenous associations are those that diverge the most from official discourse and discussions in the TRIPS Council. Although not all indigenous representatives are completely opposed

to efforts to modify the TRIPS Agreement so as to require disclosure of origin, prior informed consent and benefit-sharing, indigenous understandings of the issues surrounding traditional knowledge are the most challenging to the assumptions underpinning TRIPS and the most absent from official discussions.

In the following three chapters, I turn my attention to the field of activity in which interactions take place between representatives of 'global civil society' and the WTO. I analyse, in turn, the regime of truth and visibility, technologies of government, and preferred forms of subjectivity that work to govern the field of possible of action within it. I return to these debates about TRIPS, traditional knowledge and biodiversity in Chapter 7, and examine the ways in which the forms of rationality, technologies of government and preferred subjectivity limit what is sayable and the kinds of perspectives that are considered legitimate in the field of civil society-WTO interaction.

## Chapter Four

# Knowing Global Civil Society: A Regime of Truth and Visibility

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In this chapter, I focus on the forms of knowledge and visibility that have emerged within the WTO in relation to 'global civil society', and to the kind of interaction that is understood to be possible and/or desirable between this 'global civil society' and the WTO. These forms of knowledge and visibility underpin and are (re)produced by the various practices and procedures that constitute and structure the field of civil society-WTO interactions. They permit, support and feed into the techniques and technologies of government that work to keep activity in this social field within acceptable limits (examined in Chapter Five), and the processes of subjectification and preferred forms of subjectivity that are considered legitimate and appropriate within it (examined in Chapter Six). They shape WTO representatives' responses to civil society organisations, and, in doing so, are part of a broader 'regime of government' (Dean 1999: 32; Gottweis 2003: 252) that structures the possibilities of action of individuals and organisations that seek to interact with the WTO.

The chapter is divided into two sections. In the first, I identify and discuss four basic discourses that permeate and shape Secretariat and delegates' responses to 'global civil society': the discourse of 'civil society can contribute'; the discourse of 'civil society must be informed'; the discourse of 'civil society is confusing'; and the discourse of 'global civil society is not that relevant'. Although there are traces of older discourses present within the WTO, such as a 'civil society is dangerous' discourse which feeds on memories of the 1999 Seattle protests and positions 'global civil society' as violent and unruly,

these four basic discourses have come, I argue, to dominate both Secretariat staff and national delegates' understandings of the role 'global civil society' can play in the WTO's activities. In the second section, I reflect on the particular regime of visibility and invisibility that emerges through the combination and intersection of these discourses. I argue that certain kinds of organisation, namely those that maintain a permanent physical presence in Geneva, contribute what is recognised as technical expertise and use trade-friendly vocabularies and frameworks, are rendered more visible and perceived as more legitimate participants in dialogue than others.

## Knowing Global Civil Society: The Four Basic Discourses

WTO Secretariat officials and national delegates who define and enact the WTO's relationship with global civil society tend to conceptualise 'global civil society' and the kind of relationship it can and/or should have with the WTO in a number of relatively systematic and coherent ways. Interviewees' accounts and rationalisations of their dealings with civil society organisations, as well as official WTO documentation and speeches made by Pascal Lamy, WTO Director-General, emphasise several common elements, ideas and logics, such as the notion that civil society organisations can contribute to the WTO's work and activities. There are now, I argue, four basic discourses that underpin and are reproduced through Secretariat officials' and delegates' responses to civil society organisations (with little difference between Secretariat officials' and delegates' accounts): what I have called the discourse of 'civil society can contribute'; the discourse of 'civil society must be informed'; the discourse of 'civil society is confusing'; and the discourse of 'global civil society is not that relevant'. Some of these discourses incorporate elements and ideas that are present in the scholarly literature on 'global civil society' and its role in global governance discussed in Chapter One; others rely more on practical experience and accumulated practical knowledge.<sup>42</sup> There are also traces of older discourses present, such as what we might call a 'civil society is dangerous' discourse, which draws on memories of protests such as those that accompanied the WTO Ministerial meetings in Geneva in 1998 and Seattle in 1999, and positions 'global civil society' as violent and irresponsible. According to an interviewee in the Secretariat's Information and External Relations Division, it took officials in other divisions 'a while to figure out that actually we don't work with aliens, we don't work with people from another planet.' As the same interviewee put it, 'a lot has changed' in the past five years in the field of civil society-

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<sup>42</sup> The WTO Secretariat provides no formal training or guidance about 'civil society' to its staff, and national delegates are often left to use their own judgement about the kind of relationship to have with civil society organisations in Geneva, with little instruction about this from their governments. Practical, individually generated and accumulated knowledge is thus relatively important in the generation and maintenance of these ways of thinking.



WTO interactions, as both WTO and civil society representatives and have become ever more accustomed to interacting with each other, and the 'civil society is dangerous' discourse has mostly been supplanted by the other four discourses. These four discourses place the question of how to interact with representatives of 'global civil society' within a particular 'interpretive optic' (Hansen 2006: 6), which shapes WTO responses to civil society organisations and makes some of these organisations more visible and prominent than others.

### *Civil Society Can Contribute*

The first dominant way of thinking about 'global civil society' and its relationship to the WTO focuses on the contribution that civil society organisations can make to the WTO's work and overall mission. This discourse of 'civil society can contribute' permeates WTO documentation and sections of the WTO website which deal with the organisation's external relations, and is frequently invoked by WTO Secretariat officials at events involving civil society organisations and other members of the public. Coverage of the annual Public Forums on the WTO website, for example, often alludes to the idea that NGOs and other kinds of civil society organisations can and should contribute to the work carried out within the WTO. In the introduction to the section of the website dedicated to the 2010 Public Forum, for instance, Pascal Lamy presents the Public Forums as an opportunity for representatives of civil society organisations to contribute to the work of the WTO. As he puts it:

An increasing number of stakeholders are having their say in shaping the world's economic and political environment. The three days of the WTO Public Forum are dedicated to them. Representatives of civil society organizations, business groups, trade unions, academics and many others will have an opportunity to engage in open discussions, raise issues of interest to them and contribute towards the work of the WTO.<sup>43</sup>

He concludes the introduction by urging participants at the Forum to make the most of this opportunity to contribute: 'I am confident that, through your active engagement and participation, this year's discussion will prove to be both stimulating and thought-provoking.' Similarly, in the introduction to the pages on the 2009 Public Forum, Lamy positions civil society as an active and needed contributor to the ongoing work and negotiating agenda of the WTO:

As in previous years, the Public Forum provides you with the opportunity to voice your opinions on any aspect of the multilateral trading system. And

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<sup>43</sup> WTO (no date), 'WTO Public Forum 2010: "The Forces Shaping World Trade"', [http://www.wto.org/english/forums\\_e/public\\_forum10\\_e/public\\_forum10\\_e.htm](http://www.wto.org/english/forums_e/public_forum10_e/public_forum10_e.htm).

this year, at a time of economic crisis, your contribution is needed more than ever as we come together to seek global solutions to global problems.<sup>44</sup>

Lamy's opening speeches at previous Public Forums draw on similar ideas and constructions. At the 2007 Public Forum, for example, he told the audience of NGO representatives, academics, students and staff at other international institutions to 'let me be clear, the WTO is looking for your contribution, it needs you to help shape its agenda',<sup>45</sup> before mentioning a number of issues where civil society can be seen to have contributed positively to the WTO's work, including the 2003 amendment to TRIPS designed to improve access to medicines, negotiations on fisheries subsidies, and connections between trade and the environment. At the 2008 Public Forum he invoked similar ideas, calling on 'civil society to continue bringing its ideas and solutions forward. It is only with your active participation that the WTO can come to reflect the type of institution you seek for the future.'<sup>46</sup> The official WTO narrative around the Public Forums thus draws heavily on the notion that the appropriate relationship between civil society and the WTO is one in which civil society contributes ideas and suggestions to the WTO's agenda.

The discourse of 'civil society can contribute' also appears in national delegates' interpretations and conceptualisations of their interactions with 'global civil society'. The Geneva-based NGOs have established something of a reputation among national delegates as organisers of workshops, seminars and working lunches that help particularly developing country delegates understand and explore issues relating to ongoing negotiations,<sup>47</sup> and as providers of technical assistance and support. These workshops and seminars are packaged as opportunities for delegates and other interested parties to explore and find solutions to negotiating problems, and to develop their awareness and understanding of complex negotiating issues. According to a member of staff in one of the Geneva-based organisations most known for providing solid, reliable information and support to national delegates, 'what we're trying to do is facilitate a better understanding of the problem, we're trying to contribute a better conceptualisation of the issues, and in that way try to see what the solutions are'. Developing country delegates I interviewed repeatedly praised these events and the level of understanding generated through attending and participating in them, emphasising the ways in which these interactions with civil society organisations

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<sup>44</sup> WTO (no date), 'WTO Public 2009: "Global Problems, Global Solutions: Towards Better Global Governance"', [http://www.wto.org/english/forums\\_e/public\\_forum09\\_e/public\\_forum09\\_e.htm](http://www.wto.org/english/forums_e/public_forum09_e/public_forum09_e.htm)

<sup>45</sup> The text of the 2007 speech is available here:  
[http://www.wto.org/english/news\\_e/sppl\\_e/sppl73\\_e.htm](http://www.wto.org/english/news_e/sppl_e/sppl73_e.htm)

<sup>46</sup> The text of the 2008 speech is available here:  
[http://www.wto.org/english/news\\_e/sppl\\_e/sppl101\\_e.htm](http://www.wto.org/english/news_e/sppl_e/sppl101_e.htm)

<sup>47</sup> I outline the various spaces of civil society-WTO interaction and highlight the role of the Geneva-based NGOs in maintaining certain spaces in Chapter Five.

contributed to their awareness of relevant issues and details, and ultimately their negotiating positions. One delegate, for example, told me how 'civil society played a big role' in developing and defending a position on what are referred to in the WTO as the TRIPS-CBD issues. As he put it:

they helped me a lot, since I arrived, to understand the issue, and afterwards, to discuss with real experts on IP [intellectual property] and to understand and present and to even draft the papers that we have presented, so all the work there is basically because, I mean delegates alone cannot do anything, we are not magicians or wizards or experts, that's the thing.

Another delegate described how a TRIPS-CBD proposal drafted in 2006 was 'based on inputs from civil society', naming a number of individuals, several of them academics, who provided key expertise and support. 'They are like-minded, they helped a lot', he concluded, thus iterating a version of the 'civil society can contribute' discourse that emphasises the expertise and specialist knowledge that individuals and organisations understood to be part of civil society can contribute to ongoing work and concerns.

Developed country delegates also articulated versions of the 'civil society can contribute' discourse, but tended to see developing countries as most in need of the expertise and support that civil society organisations can offer. As one official put it:

What NGOs want and do in respect to developed members of the WTO is very different to their work with developing members. With Peru, for example, the NGOs are supporting the policy objectives of the country, the development and environmental objectives. They provide material and arguments, they back them up. But with developed members, their work consists of convincing us that we have to do something.

The official was quite clear, nevertheless, that any contribution made by civil society should support members' existing priorities and positions. The relationship between developing countries, their delegations in Geneva and civil society organisations should be one where the developing countries first 'identify where their national interests lie', then 'NGOs can defend them, back them up, give them the factual information they need.' The problem, according to the same official, is that countries do not always have sufficient resources to identify their own national interests, and delegates can end up over-relying on civil society organisations for information and policy direction.

The discourse of 'civil society can contribute' articulated by Pascal Lamy and present in national delegates' accounts and rationalisations of their interactions with Geneva-based NGOs relies, it should be noted, on a particular understanding or construction of

what being a 'contributor' entails. As mentioned earlier, national delegates understand 'contributing' to mean sharing knowledge and expertise which helps them better understand negotiating issues, or be able to develop and defend particular negotiating positions. 'Contributing' thus entails engaging in technical, specialist debates with national delegates about policy issues and their potential ramifications, and requires detailed, substantive knowledge of trade policy and related policy areas. As one WTO official put it, 'this place is a legal place, it's technocratic. It's very difficult to understand if you go into the substance, it's not an easy matter. It's not simplistic stuff. And if you want to influence, you need to focus on substance.' 'Contributing' thus requires an ability to engage in debates with national delegates, and to a lesser extent Secretariat staff, at the legal, technocratic level at which work is carried in the WTO.

### *Civil Society Must Be Informed*

The second dominant way of conceptualising the relationship that should connect the WTO and 'global civil society' competes with the discourse of 'civil society as contributor', and centres around the notion that the purpose of civil society-WTO interactions is to (better) inform civil society organisations about the work carried out in the WTO. There are two distinct but connected strands to the 'civil society must be informed' discourse, which draw on different sets of assumptions and rationalisations, but nevertheless reach the same conclusion about the need for Secretariat staff and trade officials to provide more detailed information about the WTO and its activities to interested civil society organisations. The first, what we might call more strategic, strand of this discourse constructs opposition to the WTO and its policies as a result of insufficient or mis-information, which can be overcome by better disseminating 'real' information about the nature of the WTO and its activities. The second, more principled, strand of the discourse draws on ideals of transparency, democracy and participation, and the moral right of the public to know what kind of policies and decisions are being made at a global level, all of which also require better dissemination of information about the WTO and its activities. The 'civil society must be informed' discourse, in contrast to the 'civil society can contribute' discourse discussed above, thus constructs civil society as a recipient rather than contributor of information and expertise, and, in consequence, as a more passive and malleable object of knowledge.

The more strategic strand of the 'civil society must be informed' discourse is particularly prevalent in the sections of the WTO Secretariat that are responsible for delineating and delivering the organisation's strategy towards civil society organisations, i.e. the Information and External Relations Division and the Office of the Director-General. It draws on collective memories and constructions of the 1999 Ministerial Conference in

Seattle and the so-called Battle of Seattle that accompanied it, which are interpreted as a wake-up call or watershed moment in the organisation's relatively short history, because they revealed the extent of public hostility to and perceived misunderstanding of the nature of the WTO. According to an interviewee in the Information and External Relations Division, the WTO's current efforts to engage in dialogue with civil society can be traced back to experiences in Seattle, and to a sense that events there revealed a need for a closer relationship between the WTO and civil society based on sharing information:

After Seattle, it was very clear that we had to do something, we had to work more in collaboration, a relationship had to be established ... in the Secretariat and at the Director-General level as well there was an understanding that we needed to enhance our relationship, basically inform them, because a lot of the criticism they were directing at us was about the lack of transparency.

Hostility and opposition to the WTO such as that demonstrated in Seattle are linked, in the strategic strand of the discourse, to a lack of proper information or understanding about the WTO, which can be corrected through engaging in dialogue with civil society and better disseminating information about what the organisation actually is and does. The same official talked, for example, about outreach activities organised for parliamentarians and NGOs in different regions of the world as an opportunity 'to go and inform them [parliamentarians and NGOs] about the work that the WTO does ... From our perspective, it's about providing them with information, [as] many of them have misconceptions about what the WTO is, for example that environmental concerns are never taken into consideration.'

The desire to inform and correct misconceptions about the WTO prescribed by the strategic strand of this discourse is also evident in many of the publications and communications produced by the WTO Secretariat and aimed at civil society and the public more generally. One of the pages introducing the WTO and its main functions on the WTO's website includes, for example, a link to a brochure entitled '10 Common Misunderstandings About the WTO'.<sup>48</sup> The short description of the brochure included on the page clearly alludes to the discourse of 'civil society must be informed': 'Is it [the WTO] a dictatorial tool of the rich and powerful? Does it destroy jobs? Does it ignore the concerns of health, the environment and development? *Emphatically no.* Criticisms of the WTO are often based on fundamental misunderstandings of the way the WTO works.' The brochure then works through these '10 Common Misunderstandings', which include statements such as 'The WTO Dictates Policy', 'Commercial Interests Take

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<sup>48</sup> WTO (no date), 'What is the WTO?', [http://www.wto.org/english/thewto\\_e/whatis\\_e/whatis\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/whatis_e.htm). The brochure itself is available here: [http://www.wto.org/english/res\\_e/doload\\_e/10mis\\_e.pdf](http://www.wto.org/english/res_e/doload_e/10mis_e.pdf).

Priority Over Development’ and ‘The WTO is Undemocratic’, providing alternative readings and counter-arguments intended to convince readers of the inaccuracy of such viewpoints and the misconceptions on which they are based. The same logic also underpins many of the Secretariat’s face-to-face interactions with representatives of civil society organisations, which are premised on providing detailed information about and interpretations of ongoing WTO work and activities to interested individuals and organisations. The Information and External Relations Division organise regular informal briefings, for example, which provide the mainly Geneva-based NGO representatives who attend with an overview and some degree of analysis of the content of WTO meetings and seminars open only to national delegates and Secretariat staff and are intended to make sure, one official told me, that these individuals are ‘well-informed’. An overriding concern of staff in the Division seems to consist of ensuring that civil society and the public more generally are well-informed about the WTO, in order to limit misunderstandings and criticisms about a lack of transparency which could distort public debate on trade.

The more principled strand of the ‘civil society must be informed’ discourse mirrors much of the academic literature on civil society and the WTO in linking increased dissemination of information with classic liberal values such as transparency, participation and the public right to be able to access information about governing activities and processes (see e.g. Charnovitz 2003, 2005; Dunoff 1998, 2003; Smythe and Smith 2006). It is also perceptible in official WTO narrative about civil society and its relationship with the WTO, and in the calculations and rationalisations of Secretariat officials involved in making decisions about civil society engagement. Pascal Lamy, according to interviewees in the Secretariat, is a strong believer and advocate of this kind of thinking. According to one official:

It has to be said, to his great credit, he [Pascal Lamy] is also someone who is not afraid. And he’s also someone who’s very independent and what’s more, he believes in this. He believes that it’s very important to liaise with civil society and with the outside world in general. The public after all has elected the politicians, and whoever deals with or does the negotiations here, deals with something that actually interferes [in people’s lives], to a certain extent.

The logic underlying this strand of the discourse thus places more emphasis on making information about the WTO available and accessible to the public than the more strategic strand, which focuses more on engaging with and informing sections of the public that are critical of the WTO in order to potentially shape debates about trade policy. It thus prescribes making efforts to disseminate information and generally being transparent about the WTO and its activities, as well as providing information to individuals or organisations that specifically request it. National delegates to the WTO,

particularly those from countries with liberal democratic traditions, are also reported to espouse and reproduce this kind of logic. After Seattle, for example, some members 'started making proposals on transparency', as 'they realised the public interest is there, the knowledge is absent, we need to do something'. Proposals were made by 'the Europeans, the Americans, the Canadians' to open up trade policy review mechanisms and the General Council, but these 'didn't fly with most of the developing country members', who are more likely to espouse and enact other discourses about the appropriate relationship between civil society and the WTO.

### *Civil Society Is Confusing*

The third dominant way of thinking about and relating to civil society within the WTO is rather different to the 'civil society can contribute' and 'civil society must be informed' discourses, in that it does not articulate any clear message about the relationship that should exist between 'global civil society' and the WTO, and does not prescribe any particular course of action or policy. It centres on a construction of civil society as a confusing, uncertain and complex set of networks and elements, which although accepted as a legitimate presence in discussions about trade policy and its impacts, defies easy definition and straightforward response. This discourse thus reflects a number of elements that are present in the academic literature: Helmut Anheier and his co-authors, for example, in their introduction to *Global Civil Society 2001* explicitly recognise that 'global civil society is a fuzzy and a contested concept' (Anheier et al 2001: 11); Jens Bartelson has even argued that 'no one seems to know exactly *what* global civil society is, only *that* it is' (Bartelson 2006: 372). The sense that civil society is rather confusing pervades the WTO Secretariat, particularly those sections of it which are not involved in defining policy towards civil society but are nevertheless expected to engage in dialogue and provide information to civil society organisations. In my interviews with officials in the Intellectual Property Division, interviewees often expressed a sense of confusion and doubt about what 'civil society' actually is, and the most appropriate way to define and conceptualise it. One interviewee, for example, told me that 'I personally would like a definition of civil society', before discussing some of the complexities and ambiguities inherent in the term. The fact that staff in the Secretariat can themselves be considered part of civil society, in that alongside their professional duties, they are also concerned about issues conventionally understood to be part of civil society's agenda, such as environmental concerns and worries about energy consumption and security, was just one of issues mentioned.

Other interviewees in the Secretariat talked about the difficulty of defining civil society and the types of organisations that are understood to be part of it, and pinpointing who it is exactly that they should be engaging in dialogue with. An official in the Information and External Relations Division, for example, told me that 'we don't have a strict definition of what an NGO is', before elaborating on the type of organisation that is treated as an NGO within the division: 'for us there's no distinction really, we treat NGOs as NGOs, business groups as well, labour, trade unions as well, they all fall under the civil society grouping that we regularly work with.' The lack of formal definition of 'civil society' or 'NGO' provided by the organisation's mandates and laws, or even agreement about which category is most relevant (both terms are used throughout the WTO's communications and publications), mean that officials in the Secretariat often develop their own working definitions and practical understandings of these terms. These working definitions and understandings can vary from official to official, however. One official, for example, included industrial associations in his definition of 'NGOs', but excluded them from his definition of 'civil society': 'the other side, if I were to call it the other side, the industry NGOs, industrial associations, well, they're also non-governmental, so I suppose you can call them NGOs, although you wouldn't call them civil society as such.' 'Civil society' is thus understood to refer to organisations that are driven by moral principles, and to exclude industrial associations that are presumably driven by profit and material concerns. The WTO-published *World Trade Report 2007*, in contrast, whilst also including industrial associations in the category 'NGO', positions them all within a broader category of 'civil society':

The use of the term NGO in the present WTO context encompasses public action NGOs, labour unions, industry associations, but not individual companies. The somewhat wider concept of civil society, while still excluding firms, also includes parliamentarians and the general public, including associations and citizens' networks.

(2007: 333)

Another official interviewed in the Secretariat provided a definition which equates civil society with both NGOs and business associations:

We basically consider business at the same level as civil society groups. We also don't distinguish, we don't even have a definition of civil society or NGOs. Any non-profit, non-governmental organisation we deal with and all the business associations are considered NGOs for us. Specific enterprises are a different thing, although they only come under the heading or umbrella of an association, so you don't really deal with them specifically.

Inside the WTO Secretariat it is by no means clear, therefore, who exactly should be considered part of any '(global) civil society', and what types of organisations should be involved in dialogue and interaction with the WTO.



In addition to confusion or doubts about where to draw the boundaries around the concepts of 'civil society' and 'NGO', the discourse of 'civil society is confusing' also refers to the messages and information disseminated by groups and individuals understood to be fall into these categories. Officials interviewed in the WTO Secretariat commented, for example, on the sheer volume of material produced by civil society organisations, and the difficulties associated with understanding and making use of the information they provide. According to an official in the Intellectual Property Division:

There's too much information, I keep saying, especially in the area of access to medicines, you know it's all very nice to have all these well-meaning people who want to educate developing countries, but I must say I have difficulties following all of this, and I keep saying, how on earth can you expect this poor guy sitting somewhere in a developing country to follow all of this information.

Other interviewees highlighted the confusion and complications caused by the fact that what some of them referred to as 'international civil society' and 'national civil societies' have different agendas and priorities, that complicate the type of messages which are disseminated by 'civil society'. One interviewee, for example, talked about the need to distinguish and be aware of the differences between national civil societies which try to feed into their government's positions and priorities, and the more internationally-focused NGOs which can be considered something of a 'side industry' or 'side government', who are not interested in engaging with national authorities. 'Civil society is a mosaic of elements', the same interviewee put it, with competing interests, perspectives and demands, which defies easy definition and response.

### *(Global) Civil Society Is Not That Relevant*

The fourth dominant way of thinking about 'global civil society' and the way in which it relates to the WTO is also a more negative discourse, which rather than focusing on any particular construction of the relationship that should exist between civil society and the WTO, emphasises what it is not. What I have termed the 'global civil society is not that relevant' discourse positions civil society organisations as unimportant to the running of the WTO, and interprets direct civil society involvement with the WTO as improper and inconsistent with democratic processes. Civil society, this discourse prescribes, should feed into positions and debates at the national level, where governments can balance the demands and perspectives of competing interest groups, rather than attempting to bypass these processes through lobbying Geneva-based delegates directly.<sup>49</sup> The

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<sup>49</sup> This is not to imply, of course, that all national governments always do this, but rather that the discourse constructs governments as the proper actors to take civil society views and perspectives into account.

discourse thus draws on and reinforces a state-centric logic which sees the WTO, and the process of global trade policy-making more generally, as the business of states and state representatives, and states as the only legitimate actors in trade policy-making processes. It thus competes with and contradicts the discourse of 'civil society can contribute' and, to a lesser extent, the discourse of 'civil society must be informed' discussed earlier.

The 'global civil society is not that relevant' discourse manifests itself in a number of ways, including disinterest in the activities of civil society organisations and in the efforts made by the WTO Secretariat to promote dialogue and interaction between them and the WTO, and scepticism about the relevance of civil society activities and perspectives to the proper, state-centred business of the WTO. One national delegate I interviewed, for example, when asked about the various programmes and schemes introduced by the WTO Secretariat to increase interaction between civil society and the WTO, including the badge scheme which allows representatives of trusted and known NGOs to access the WTO buildings freely, told me that 'we don't go there [to the WTO] from that viewpoint, who's sitting there or who's not, are NGOs there or not. Our struggles are different'. Another delegate, when asked his views on the same programmes and schemes, simply responded 'I don't know anything about it'. The activities of 'global civil society' and the kind of interaction that the Secretariat has been trying to facilitate with civil society organisations are not considered particularly relevant or important by these delegates: what matters are the trade negotiations and efforts to maintain and protect what are perceived as national interests. As another interviewee, a former delegate put it, 'it doesn't matter for the governments, or their delegates, what civil society is saying. What matters to them is the mandate is that comes from their bosses back home, which is their politicians, which is their ministers.'

The 'global civil society is not that relevant' discourse also manifests itself in a sense, perceptible amongst both national delegates and WTO Secretariat staff, that civil society should participate in dialogue and debate at the national level rather than trying to bypass national democratic processes. According to one official in the WTO Secretariat, for example, 'the WTO is a forum where civil society, *through the delegations*, can make a decision ... even if you don't see the direct representation of civil society in a delegation, then the delegation still has to reflect their views' (emphasis added). The correct way for civil society organisations to become involved in decision-making processes in the WTO thus entails, according to this discourse, feeding their views and perspectives into the positions of their national delegations, rather than through being granted any independent presence or status in the organisation. The state-centric logic underpinning the 'global civil society is not that relevant' discourse was even clearer in

the assessment of the WTO's relationship with NGOs offered by one of the national delegates I interviewed. 'The WTO Secretariat is a secretariat for WTO members', he told me, which means that 'it's the responsibility of the members to create the channels for interaction with NGOs, to hear the positions of NGOs'. Later in the interview he commented on what he called 'the myth of the democratic deficit' at the WTO: although decision-making processes at the WTO are often criticised by NGOs as being undemocratic, he said, 'it's NGOs who would like to bypass the democratic process and go directly to the WTO'.

The 'global civil society is not that relevant' discourse, although prevalent and accepted as common sense by many national delegates to the WTO, is nevertheless being problematised and challenged by several Geneva-based civil society organisations. Many of the NGO representatives I interviewed recognise that, historically, trade policy-making has been considered by many to be the preserve of states and their governments, but offer arguments and counter-narratives which seek to destabilise this state-centric discourse. One NGO director, for example, traced the idea that states are the only relevant actors in trade policy-making to the WTO's predecessor, the General Agreement on Trade and Tariffs (GATT), and challenged the relevance of this idea given the different nature of the two organisations:

GATT was an extremely closed organisation. But that didn't matter very much because GATT essentially only dealt with what happens to manufactured goods when they reach a frontier. Which has very little public policy impact. The Uruguay Round agreements are mostly behind-the-border agreements. They concern how domestic policy is crafted and the impact of that on trade. So all of a sudden, the WTO was questioning health and food safety policies, it was questioning regulations on packaging, it included intellectual property rights, all of that stuff went straight to the heart of what was traditionally domestic policy terrain. And as a result it tripped over the interests of all sorts of groups, NGOs, you know fighting AIDS or whatever, and how you actually get in and influence that process became very important. And of course the WTO initially followed the GATT culture of saying this is government business, stay out. It's not an answer that NGOs particularly welcomed.

NGO interest and involvement in WTO processes is thus framed, in this counter-narrative, as a necessary response to the fact that WTO policy does not just impact on trade, but also to areas of public policy such as healthcare and development. Later in the interview, he further elaborated the argument:

What I think we need is a clear recognition first, and a clear mapping second, of those issues in the WTO that are of central public policy interest. They can be healthcare, they can be human rights, they can be environment, they

can be the development policy space, whatever it is. But there has to be a very clear recognition ... that issues that have a strong impact on public policy should not be debated in closed forums, and should not be debated on the basis of commercial logic.

Other interviewees in Geneva emphasised the particular skills and expertise they can bring to delegates and trade policy-making, thus positioning themselves as superior sources of information and therefore necessary elements in decision-making processes at the WTO. An interviewee in one Geneva-based NGO told me, for example that 'delegates have realised that the research that we produce is quite good, what we do is not just rhetoric or ideology, or rhetorical ideology'. An interviewee in another Geneva NGO, similarly, commented that 'what we're trying to do, particularly in this area of intellectual property is to bring some evidence'. This type of argument and narrative about the superior level of expertise and evidence that NGOs can bring to the WTO thus attempts to undermine and destabilise the state-centric logic underpinning the discourse of 'global civil society is not that relevant', through simultaneously suggesting that states alone are not capable of making expert, evidence-based policy decisions, and constructing a specialist niche that NGOs can then successfully fill.

## A Regime of Visibility and Invisibility

I now turn my attention to the regime of visibility and invisibility generated through the intersection of these four competing discourses, in terms of what kind of civil society organisations and knowledges are visible and recognised as legitimate in civil society-WTO interactions and debates. In doing so, I draw on what one scholar has referred to as Foucault's 'theory of *visibility*', i.e. the understanding that the 'phenomenon of 'being seen' [is] neither an automatic nor a natural process, but linked to what power/knowledge guides one to see' (Lidchi 1997: 195). My intention is not to outline the grid of visibility generated by these discourses in great detail, but to highlight some important tendencies that emerge from the intersection and interaction of the four dominant discourses. I argue that the four dominant discourses identified in the previous section – the discourse of 'civil society can contribute', 'civil society must be informed', 'civil society is confusing', and 'global civil society is not that relevant' – combine together in ways that render certain types of civil society organisation, and certain types of interventions, more visible and legible than others. I identify and discuss three elements or axes of the regime of visibility generated through the intersection of the four basic discourses: the importance of maintaining a presence in Geneva; the increased visibility of organisations and individuals who can contribute technical expertise; and the visibility gained through using appropriate vocabularies and frameworks.

The first noteworthy element in the regime of visibility generated by the four discourses is the importance of maintaining a regular presence in Geneva. The discourse of 'global civil society is not that relevant', in combination with the still occasionally perceptible older discourse which positions civil society as dangerous and unruly, means that engaging with civil society and creating opportunities to exchange information and viewpoints, are not seen as a particularly high priority in the WTO. The Information and External Relations Division, as well as other divisions in the WTO Secretariat that interact regularly with civil society, work with a relatively narrow mandate that emphasises the importance of transparency and communication with NGOs, but clearly states that 'primary responsibility for taking into account the different elements of public interest which are brought to bear on trade policy-making' lies 'at the national level',<sup>50</sup> and, connected to this, relatively limited resources for organising outreach and communication activities. This narrow mandate and lack of resources, in combination with the 'civil society is confusing' discourse, generate a strong pressure for Secretariat staff and national delegates to interact mainly with organisations and individuals who make *themselves* visible and available for interaction, either through regular face-to-face interactions in Geneva, or to a lesser extent, regular telephone and email contact. To put it another way, the combination of the 'global civil society is not that relevant' discourse and the 'civil society is confusing' discourse is linked to a tendency for WTO Secretariat staff, national delegates and trade officials to be passive rather than proactive in their dealings with civil society, to wait and see who contacts them rather than seeking out interactions or trying to identify new organisations and groups who might also be interested in sharing their perspectives and/or experiences. This tendency automatically renders civil society organisations and individuals who can and choose to maintain a regular or permanent presence in Geneva more visible than those who do not.<sup>51</sup>

The second element worth mentioning in this regime of visibility is the value associated with technical understanding and expertise, and the increased visibility of organisations and individuals who are willing and able to contribute to debates at a technical, specialist level. This preference for technical expertise derives in large part from the 'civil society can contribute' discourse, which positions civil society organisations as

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<sup>50</sup> WTO Document WT/L/162, 'Guidelines for Arrangements on Relations with Non-Governmental Organizations: Decision adopted by the General Council on 18 July 1996', Article VI, available here: [http://www.wto.org/english/forums\\_e/ngo\\_e/guide\\_e.htm](http://www.wto.org/english/forums_e/ngo_e/guide_e.htm)

<sup>51</sup> Officials in the Secretariat do recognise that this Geneva-bias is not ideal. When discussing the relatively new badge system which gives NGOs regular access to the WTO buildings, for example, and the fact that at the time of interviewing, it was only Geneva-based organisations that were permitted badges, an interviewee in the Information and External Relations Division told me that 'the next step in the scenario is to advise, all this seems to work, now how are we going to deal with visitors from out of town?'. The importance of maintaining a base in Geneva may well decrease, therefore, at some point in the future.

contributors of detailed, specialist knowledge to ongoing policy debates and sources of technical support and assistance for national delegates. It is reinforced by the 'civil society is confusing' discourse, which makes groups and individuals who use vocabulary that resonates and makes sense to national delegates and Secretariat officials appear more reasonable and easier to engage with than other civil society organisations. National delegates and Secretariat officials interviewed in Geneva frequently referred, for instance, to ICTSD as an example of a civil society organisation that does useful, relevant, high-quality work on the topic of TRIPS, traditional knowledge and biodiversity. This organisation, highly visible to delegates and Secretariat staff, describes itself as 'a leading broker of knowledge and information on trade policy and sustainable development', which aims to 'mobilize the best expertise around the world through dialogue and research', and process it 'so that it is applied and relevant for international policy making processes'.<sup>52</sup> The visibility of ICTSD must be interpreted, at least in part, to the ability and willingness of its staff to accumulate information and expertise and communicate it in a form which is suitable for policy-making.

The visibility that accrues through technical expertise is closely connected to the third form of visibility to be discussed here, namely the visibility generated through the ability to communicate using appropriate vocabularies and conceptual frameworks. This form of visibility is also primarily a product of the 'civil society can contribute' discourse and the logic it carries, which positions civil society as a source of ideas and expertise which can enhance trade policy-making processes. Interviewees in Peruvian NGOs that try to follow and feed into discussions about trade policy talked about needing to learn and use more business-oriented and technical forms of language in order to follow and participate in discussions. According to one interviewee in Lima:

El comercio nunca ha sido un tema fácil, es cierto, ha sido más un tema de expertos. Pero al final el comercio era el intercambio de bienes y servicios. Luego apareció la propiedad intelectual, luego apareció el tema de las inversiones. O sea, entró a unos campos en los cuales ya la cosa se escapaba del comercio realmente. Las organizaciones sociales, por lo menos las que conozco en varios países de la región, no cuentan con, porque quieren también, con equipos técnicos que pueden decir vamos a hacer el seguimiento de eso. Entonces ha habido un aprendizaje, por hacer que se pongan al día en la discusión, encargar estudios, responder. Pero siempre con una enorme desventaja. Una enorme desventaja, porque la sociedad civil que más representada está en esto, por decirlo de una manera, si tú tienes una visión amplia de sociedad civil, son los empresarios.

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<sup>52</sup> See ICTSD (no date), 'About Us', <http://ictsd.org/about/>.

Trade has never been an easy topic, it's true, it's always been more a topic for experts. But trade used to mean the exchange of goods and services. Then intellectual property appeared, the topic of investment appeared. To put another way, it entered areas where it's not really about trade anymore. Social organisations, at least the ones I know in various countries in the region, don't have, because they want to as well, they don't have technical teams that can say let's monitor all of this. So there's been a learning process, so that they are able to follow discussions, commission studies, respond. But always with an enormous disadvantage. An enormous disadvantage, because the civil society that's most represented in this, to put it one way, if you have a broad vision of civil society, it's businesspeople.

The same interviewee talked about the Peruvian government's efforts to consult with civil society organisations on trade issues, and the factors that increase the chances of being heard. 'Conveagro [Convención Nacional del Agro Peruano] tuvo un rol. ¿Por qué tuvo un rol? Porque tenía una representación muy amplia de los sectores productores agrícolas, campesinos. Porque tenía académicos y porque tenía empresarios. Y ellos lograron tener una voz para que se les escuche' (Conveagro [National Convention for Peruvian Farming] played a role. Why did it play a role? Because it represented a very wide range of agricultural producers and farmers. Because it had academics, because it had businesspeople. And they managed to find a voice that was listened to). Visibility is thus also increased by possessing an ability and willingness to communicate using trade- and business-oriented language and frameworks, including when interacting with trade officials at the national level.

## Conclusion

This chapter has identified and outlined four dominant ways of thinking about and conceptualising global civil society, its capacities and attributes, and the kind of relationship it can/should have to an institution of global governance such as the WTO. Although traces of older discourses, such as a 'civil society is dangerous' discourse, can still be perceived in the sensitivities that are seen to surround the question of civil society involvement in WTO affairs, I have suggested that conceptualisations of, and attitudes towards, 'global civil society' within the WTO currently cluster around four basic discourses: the discourse of 'civil society can contribute', 'civil society must be informed', 'civil society is confusing', and 'civil society is not that relevant'. In the final section of this chapter, I pointed out some of the ways in which these discourses intersect and coalesce to form a regime of visibility, in which certain types of organisation, notably those with a permanent or regular presence in Geneva, those with the capacity and willingness to contribute technical expertise, and those able to communicate using technical, business-oriented vocabularies which are recognisable

and legible to Secretariat officials and delegates, are more visible and appear more legitimate than others. In the following two chapters, I turn my attention, firstly, to the technologies of government that these discourses support and permit, and, secondly, to the forms of subjectivity that these discourses incite and prescribe.



## Chapter Five

# Structuring Global Civil Society: Sites and Technologies of Government

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The previous chapter explored the regime of truth and visibility that has emerged within the WTO in relation to 'global civil society'. In this chapter I turn my attention to the practices and procedures that sustain and reflect this regime of truth and visibility, and to the forms of control and restriction it permits. I outline the various formal and informal practices that structure interactions between representatives of 'global civil society' and of the WTO. These practices emanate from a range of individuals and institutions, including members of the WTO Secretariat, national delegates based in Geneva, trade officials, and Geneva-based NGOs, and constitute the field of civil society-WTO interactions as a distinct transnational social space with its own regularities and norms. I also examine some of the ways in which power is implicated in the constitution of this field, through exploring the governmental technologies that extend across the various spaces of civil society-WTO interaction. These technologies of government work, as Foucault put it, 'to structure the possible field of action' (1983: 221) of those who wish to participate in dialogue with representatives of the WTO, and to define what forms of subjectivity are desirable and acceptable in the field of civil society-WTO interactions.

The chapter begins with an overview of the contexts and spaces in which formal and informal contact takes place between representatives of civil society and of the WTO, and of the main practices and procedures that regulate this contact. I then identify a number of governmental technologies that work across these social and communicative

spaces to shape the field of possible action of those who wish to participate in them. I examine four governmental technologies, along, where relevant, with the counter-conducts that challenge them: (1) the control over access to information; (2) what I have called the 'responsibilisation' of would-be participants in dialogue; (3) the logic of competition; and (4) the use of trust as a technology of government. In combination, these governmental technologies effectively structure the field of possible action of those members of civil society who wish to participate in dialogue and interaction with representatives of the WTO, by encouraging and rewarding particular behaviours, subjectivities and models of action.

## Civil Society-WTO Interaction: Spaces, Practices and Procedures

Interaction between representatives of civil society and the WTO takes place in a number of public and private spaces, and is regulated through both formal and informal practices and procedures. These practices and procedures emanate from a range of individuals and institutions, including members of the WTO Secretariat, national delegates based in Geneva, trade officials in national governments as well as NGOs themselves. Relatively stable practices and patterns of interaction have now emerged, particularly between those organisations and individuals that have a base in Geneva. In the sub-sections that follow, I outline the main contexts and spaces in which this regular, routinised interaction takes place, and the practices and procedures that produce, maintain and structure these spaces. I begin with the official spaces and channels of interaction that have been established by the Information and External Relations Division<sup>53</sup> in the WTO Secretariat, and outline the main WTO programmes and initiatives that have been set up to manage the organisation's relations with 'civil society'. I then focus on the spaces of interaction created and maintained by many of the Geneva-based NGOs, which take the shape of regular meetings, workshops and working lunches attended by many national delegates and WTO Secretariat staff, as well as staff of other international organisations in Geneva. In the third sub-section, I identify a number of more informal but routinised ways in which interaction takes place between NGO representatives, national delegates and WTO Secretariat staff, in addition to or alongside the more formalised spaces and channels. Although there are other spaces and channels through which interaction takes place between representatives of 'civil society' and the WTO, including, for example, briefings and dialogues organised at a

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<sup>53</sup> The Information and External Relations Division was created in 2009 through the merging of the Information and Media Relations Division and the External Relations Division. Prior to 2009, it the External Relations Division managed the WTO's relations with civil society.

national level between trade officials and national civil society organisations, these are more ad hoc and irregular, so are not discussed here.<sup>54</sup>

### *Information and External Relations Division-Managed Spaces and Programmes*

The Information and External Relations Division of the WTO Secretariat plays a central role in creating and shaping the spaces and official contexts in which interaction takes place between representatives of civil society and the WTO, and, albeit to an ever decreasing extent, in regulating and channelling actual and attempted interaction.<sup>55</sup> As the administrative division officially charged with communicating information about the WTO to interested parties and with managing the WTO's relations with other organisations and the general public, the Information and External Relations Division has established a series of channels and official spaces to enable interaction between Secretariat staff, national delegates and NGO representatives. There are four main channels or spaces of communication: regular informal briefings about ongoing meetings and activities delivered by members of the Information and External Relations Division to primarily Geneva-based NGOs; informal issue-specific 'dialogues' between Secretariat staff, delegates and selected NGO representatives; NGO Centres at WTO Ministerial Conferences, with briefings and facilities such as meeting rooms and internet access provided to accredited NGOs; and annual two-three day Public Forums held at the WTO headquarters in Geneva.

The first of these channels, the regular informal briefings delivered by staff from the division to mainly Geneva-based NGOs, provide those who attend with an overview and some degree of analysis of the content of WTO meetings and seminars only attended by delegates. Secretariat staff involved in delivering these briefings stress that they differ in style and substance from the more formal 'on-the-record' briefings given to the press, in that they offer more personalised, less 'sanitised' readings of official discussions, and include personal interpretations, commentary and predictions. The briefings are provided on a strictly informal and off-the-record basis, and on the condition that nothing from the briefing be quoted or attributed to the Secretariat in any way. As one of my interviewees in the Secretariat put it, 'if you violate this unwritten rule that it's

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<sup>54</sup> For another discussion of the main channels of civil society-WTO interaction, see for example Mason 2004. He identifies 'four modes of civil society access [that] have become significant for transnational ENGOs: derestriction of documents; symposia on trade and environment; briefings on WTO council and committee work; and attendance at ministerial conferences' (2004: 568).

<sup>55</sup> As time has passed, Geneva-based NGOs have increasingly developed separate working relationships with the national delegates, so can to some extent bypass these channels and processes.

informal and off-the-record, it's over and out'. According to interviewees who regularly attend these briefings, they have, as trust has built up between the Secretariat staff and regular attendees over time, developed into 'frank and open' discussions between Secretariat staff and regular attendees about the ongoing work carried out by the WTO.

The second communicative channel, the informal issue-specific dialogues that take place between selected NGO representatives, national delegates and Secretariat staff, occur much more infrequently than the informal NGO briefings (only two or three times a year). They were initiated by the then WTO Director-General Renato Ruggiero in 1998 to provide a space in which NGO representatives could meet informally with the Director-General and national delegates, in order to exchange views and perspectives on negotiating issues. These dialogues now only take place when the chair of a negotiating group or the WTO Director-General feels that such an informal exchange of views and expertise might help move negotiations forward. Invitations to participate in such dialogues are only issued to Geneva-based NGO representatives who are trusted and known to the WTO Secretariat.

The third official space for communication and interaction, the NGO Centres that run alongside the WTO Ministerial Conferences, are meeting spaces made available to accredited NGOs during Ministerial Conferences, either inside or close to the main conference venue. They function as a parallel conference or side event to the formal Ministerial meetings, and provide a context in which accredited NGOs, national delegates, journalists and Secretariat staff interact and exchange information and viewpoints. The content of discussions at the NGO Centres is determined by the NGOs that have been accredited to participate by the WTO Secretariat. These NGOs organise discussion sessions, meetings, and workshops on topics of interest and concern, to which Ministerial Conference attendees, Secretariat staff and members of the press are invited. In addition, staff from the Information and External Relations Division and, less frequently, staff from the technical divisions of the Secretariat, provide briefings about the ongoing Ministerial meetings. The programme of activities at the NGO Centre at the 2009 Geneva Ministerial consisted, for example, of a series of parallel discussion sessions, some open to all attendees, others only open to invited participants, which were run by accredited NGOs, daily 'orientation' or 'briefing' sessions by the Information and External Relations Division, and a 'briefing' from the WTO Director-General, Pascal Lamy.<sup>56</sup>

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<sup>56</sup> The programme for the 2009 Ministerial Conference NGO Centre is available here: [http://www.wto.org/english/thewto\\_e/minist\\_e/min09\\_e/ngo\\_programme\\_e.pdf](http://www.wto.org/english/thewto_e/minist_e/min09_e/ngo_programme_e.pdf).

The events that make up the fourth space of interaction, the annual two-three day Public Forums held at the WTO's premises in Geneva, are the largest of the various official meetings bringing together representatives of 'civil society' and the WTO. They are presented by Secretariat staff as well as official WTO literature as the centrepiece of Secretariat efforts to promote dialogue and interaction between civil society and the WTO. The WTO website, for example, describes the Public Forums as 'the major opportunity for governments, NGOs, academics, businesses and students to come together to discuss issues regarding the multilateral trading system'.<sup>57</sup> The Public Forums, like the NGO Centres at Ministerial Conferences, consist primarily of parallel panel presentation and discussion sessions that have been proposed by NGOs and other representatives of 'civil society' such as academics, and selected as suitable for inclusion by staff in the Information and External Relations Division. Participation is open to anyone who registers to attend beforehand and is prepared to leave their passport at the WTO Security Desk in exchange for a visitor's badge, as well as the national delegates, WTO Secretariat staff, staff of other international organisations in Geneva and members of the press who normally have access to the WTO buildings. The number of attendees at the Public Forums who are not members of the WTO Secretariat, other international organisations or national delegates is reported to be around 800 to 900 each year.

In addition to these four main channels and spaces of interaction, the Information and External Relations Division administers a number of other smaller-scale and less formalised programmes. It runs a small regional outreach programme, for example, consisting of workshops and seminars for national or regional 'civil societies' in Africa, Asia or Latin America, which are organised in collaboration with (and usually co-funded by) partners such as local or international networks and foundations. Such events typically include presentations by three or four members of the Secretariat staff (a mixture of members of the Information and External Relations Division and the technical divisions), and input from invited academics, NGO representatives and businesspeople. The content is usually tailored towards the interests of the host country and surrounding region. The division also manages a programme in which badges permitting free access to the WTO building and all the public spaces within it (i.e. corridors and meeting spaces but not the rooms where negotiations take place) are issued to well-known and well-trusted NGOs. The programme is relatively new (it was first trialled in 2008, then made permanent in 2009), and marks a significant change from previous security arrangements, which required NGO representatives visiting the WTO building to be invited and signed in by a member of the Secretariat staff. The Secretariat also

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<sup>57</sup> WTO (no date), 'The WTO: Secretariat and Budget. Divisions', [http://www.wto.org/english/thewto\\_e/secre\\_e/div\\_e.htm](http://www.wto.org/english/thewto_e/secre_e/div_e.htm).

administers an internet discussion forum,<sup>58</sup> in which registered members of the public can respond to comments and webcasts posted by Secretariat staff, or start their own discussion threads about WTO-related matters. Members of 'civil society' may also be invited to submit reports to the WTO Appellate Body as part of the WTO's dispute settlement process (see e.g. Eckersley 2007; Howse 2003; Pauwelyn 2002; Van den Bosche 2008).

### *NGO-Managed Spaces and Activities*

Geneva-based NGOs or, to put it more accurately, the Geneva offices of what are usually international NGOs, have also played an important role in creating and maintaining a set of social spaces in which regular communication and interaction takes place with representatives of the WTO. These spaces consist of regular seminars, working breakfasts, lunches and dinners, workshops and other meetings, as well as so-called 'side events' organised alongside WTO meetings, such as the Geneva Trade and Development Symposium held to coincide with the 2009 Geneva Ministerial Conference. They are attended by national delegates and WTO Secretariat staff, as well as staff of other international organisations in Geneva, and are generally presented as opportunities to develop and deepen understanding of ongoing negotiating issues. Some of these events are publicly advertised and open to any interested individuals who wish to attend; others are made known only to selected invited participants and operate on a strictly 'off-the-record' basis. These spaces of interaction and communication are maintained, and the content of the discussion which takes place within them largely determined, by a core group of Geneva-based organisations, who frequently co-organise events as well as organising separate events and meetings. They have now become an accepted and regular part of the Geneva-based schedule of activities, to the extent that national delegates I interviewed reported being in 'permanent interaction' and 'permanent dialogue' with Geneva-based NGO representatives.

The content of the discussions that takes place in these spaces of interaction and communication is generally quite detailed and technical, and often oriented towards exploring and finding solutions to negotiating problems or uncertainty. Emphasis might be placed on generating awareness and better understanding of complex technical issues, or on helping national delegates gain the knowledge of negotiating issues necessary to be able to develop sustainable and defensible positions. As one NGO programme director put it, 'what we're trying to do is facilitate a better understanding of the problem, we're trying to contribute a better conceptualisation of the issues, and

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<sup>58</sup> [http://www.wto.org/english/forums\\_e/chat\\_e/chat\\_e.htm](http://www.wto.org/english/forums_e/chat_e/chat_e.htm)

in that way try to see what the solutions are'. Emphasis might also be placed on providing technical content and understanding that the delegates themselves request and require, either by presenting in-house analysis of the issues to the delegates, or by inviting other individuals with particular expertise to write and present papers on the issues. An interviewee in another NGO explained how, in a series of NGO meetings held in 2002 to 2003 to help delegates develop their understanding and position on the TRIPS, traditional knowledge and biodiversity debate, 'the delegates would identify which experts they wanted to be present, and to advise them directly on wording [of positions], and approaches, both legal and technical and political'.

The Geneva-based NGOs are generally very careful in the way they describe the purpose of the various meetings, seminars and workshops they organise, presenting them, for example, as opportunities for 'information-sharing' and 'brokering of knowledge', rather than attempts to advocate particular positions or courses of action. Information is presented as advice or suggestion which the delegates and Secretariat staff should use or disregard as they see appropriate. One of my interviewees, for example, described the regular meetings, seminars and workshops held by Geneva-based NGOs as an opportunity for NGOs to 'raise their concerns to the delegates', or 'tell them that we have noticed that there is a problem in this specific issue, maybe you should put emphasis on this particular point'. Another interviewee told me that the starting point of any successful relationship with the national delegates has to be the question 'what do you want to do?' Anything that looks like advocacy, or that could be interpreted as an attempt to impose particular positions or opinions on the delegates or Secretariat staff, thus seems to be avoided in the spaces of interaction that the Geneva-based NGOs have carved out and seek to maintain. The Geneva NGOs also publish and regularly circulate written reports, briefings, position papers and specialist research that they have either conducted themselves or have commissioned from other NGOs. These written forms of communication are generally framed and presented according to the same norms as interaction in the spaces of face-to-face communication, namely as information-sharing and an opportunity to better understand the technical detail and implications of negotiating issues.

### *Informal Contact*

Alongside the relatively formalised spaces of interaction created and are maintained by the WTO Secretariat and the Geneva-based NGOs, more informal spaces and channels of communication have also emerged and been consolidated over the past decade. Informal contact between the different Geneva-based actors – the NGO representatives, Secretariat staff, trade delegates, as well as staff from the other Geneva-based

international organisations – regularly takes place, and some NGO representatives, particularly those who have been established in Geneva for some time and have been able to build up a reputation for carrying out good quality work, are in regular informal contact with Secretariat staff and national delegates. This takes the form of informal phonecalls and emails to Secretariat staff whenever particular pieces of information or clarification of issues are sought, informal conversations that take place around the edges of more formal gatherings, and, in some cases, socialising with members of the Secretariat and the diplomatic missions in Geneva. Interviewees reported being able, for example, to regularly call and send informal emails to Secretariat staff whenever they need particular pieces of information or confirmation of new developments, and also receiving this type of call or email from Secretariat staff. This informal contact occurs particularly frequently with staff in the Information and External Relations Division. According to the director of one NGO:

We've certainly never had any problem whatsoever with the External Relations Division. The person responsible for NGO relations ... is extremely NGO-friendly, couldn't be better. And [the person] who does the Public Forum is great, open and accessible and in touch and at any time you can call her on her cell phone, so no complaints whatsoever there.

Staff in the division also mentioned being in constant contact with NGO representatives and other interested individuals, although the frequency of contact has reduced somewhat in recent years, as relationships with delegates and staff in the technical divisions of the Secretariat have strengthened, and WTO documents have been made available on-line more promptly. As one interviewee put it, 'it's not like it used to be where your phone would ring regularly, daily, whatever, and you got emails all the time, "what's this?", "what's going on?", "can you give me this?", "can you send me that?". This informal contact continues, nevertheless, and is sought when the NGOs want confirmation of rumours or reliable details and interpretations of new developments. According to the same interviewee, 'what they do, they call you up when they hear something and they need a trusted source, and they say, "hey, we hear this is happening, can you tell us a bit more?". And that's again often about the overall political situation, or political questions.'

Similar types and levels of informal telephone and email contact are also developing between NGOs and staff in the technical divisions of the WTO, although they are less stable and less constant than the contact with the Information and External Relations Division. According to one NGO director, 'by and large, access to WTO officials depends on their personality more than anything else. Some are extremely open and others say we're terribly busy with other important things, go away. But far more the former than the latter, far more.' This type of informal contact is, like the contact with the



Information and External Relations Division, also initiated when NGO researchers and directors want to exchange information and interpretations of new developments. According to another interviewee:

Everybody's a human being, so it's personal relationships quite often, and informal emails, and "what do you think of this?" and "what's happening there?", and there's quite a lot of information flow between the Secretariat and organisations that are involved at the technical level, that can deal with the complexities of the issues. If I've sent an email to someone in the Secretariat saying "look, what's your interpretation of this?", or "how do you understand that?", people always reply.

Informal interaction between NGO representatives and staff in the technical divisions of the WTO Secretariat also takes place, as one interviewee put it, 'in the margins' of the regular Geneva NGO-organised seminars, workshops and meetings outlined above. Technical experts from the Secretariat are regularly invited as speakers or participants at these NGO-organised events, and the regular contact in the relatively formalised space of these seminars and workshops offers opportunities for more informal exchanges of opinions and information alongside the presentations and group discussions. Attendance and participation at such events, according to one official, 'offers a platform for communication', which has led to increasing trust and familiarity developing between the well-established Geneva NGOs and the technical experts in the Secretariat. As the same official put it, 'I've been working in this field for about ten years now, so I know those people who are responsible for certain issues on the NGO side, so they would come to me, I would go to them if I need an explanation, their support for something we do.'

Informal interaction between Geneva-based NGOs and WTO representatives also occurs entirely separately from these more formalised NGO-organised spaces, through, for example, socialising together, through informal NGO visits to the embassies and missions to discuss issues of common concern with the national delegates, and through contact which arises in other institutional settings, such as the World Intellectual Property Organisation's (WIPO) Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) meetings, which NGOs are accredited to attend. For many national delegates, Geneva-based NGOs are part of the Geneva 'trade' or 'intellectual property community', which is sustained not only through official programmes and interaction, but through informal visits, contact and socialising.

## Technologies of Government

In this section, I turn my attention to the technologies of government that work across and within these different spaces of communication and interaction, and that structure the field of possible action of NGOs and other parts of 'global civil society' that wish to participate in them. These technologies of government should not be understood as the result of calculated strategies on the part of officials in the WTO Secretariat or any of the delegates (although their calculations and strategies certainly feed into the broader governmental technologies and rationalities discussed). The WTO Secretariat does attempt to steer and manage the organisation's relations with civil society and the outside world more generally (the existence of the various programmes designed to facilitate and channel interaction with civil society is evidence of this), but these attempts are supported, challenged or transformed by other practices and logics. The practices and preferences of the national delegates, for example, and the activities of the Geneva-based NGOs themselves, also feed into and sustain the technologies of government that structure activity in this social field. Rather than straightforward mechanisms of control or domination which are wielded by the WTO, these technologies of government thus emerge and are maintained through constant social interaction between the Secretariat staff, national delegates to the WTO and representatives of 'global civil society'. I identify and discuss four technologies of government that operate within and across the social spaces in which interaction takes place between representatives of civil society and the WTO: (1) control over access to information, or what I have termed 'the will to inform'; (2) the 'responsibilisation' of would-be participants in dialogue; (3) the logic of competition; and (4) the use of trust as a technology of government.

### *The Will to Inform*

The first governmental technology, the 'will to inform', works through constructing interactions between NGOs and the WTO as a simple exchange of information, devoid of political content or any attempt to influence the other party in the exchange, and through controlling access to this information. It relies on a construction of NGO criticism of and/or opposition to the WTO as a lack of information or understanding, which can be corrected through better informing civil society representatives about the WTO's activities. Criticism of and opposition to the WTO is thereby neutralised as based on misinformation and misunderstanding, and thus correctible and adaptable.

The will to inform permeates the activities and attitudes of the WTO Secretariat towards NGOs: one of the main goals of the Secretariat's programme of activities for NGOs is, according to interviewees in the WTO, to inform NGOs about WTO activities. As one official put it, 'what we have to worry about is that if there is a debate on trade [within civil society], we have people that are well-informed'. Interactions between Secretariat staff and NGOs are thus constructed as exchanges of information, or opportunities to gain access to 'real information' about what is happening within the WTO. The informal briefings delivered by the Information and External Relations Division, for example, are presented by Secretariat staff as providing access to superior information about ongoing meetings and negotiations. The staff I interviewed emphasised that these briefings differ in style and substance from the more formal 'on-the-record' briefings given to the press in that they offer more personalised, less 'sanitised' readings of official discussions, and include personal interpretations, commentary and predictions. Underpinning these briefings, according to Secretariat staff, is a desire to maximise the depth of understanding of WTO processes and activities that NGOs can gain. As one official put it, 'I want people to understand the full picture, not just what has been said by the representative, but why it was said, or why this may have been the reason that this led to a debate or clash or that it might come back'.

The will to inform, and the attendant construction of differences of opinion about WTO policy as a lack of information, is also mobilised and exploited by NGOs seeking to contribute to and shape debates and activities at the WTO. It is particularly evident in the activities and discourse of the Geneva-based NGOs who have been most successful at building relationships with Secretariat staff and delegates, who have successfully constructed a niche and identity as providers of neutral, expert information and guidance. As mentioned earlier, the Geneva-based NGOs typically present the various meetings, seminars and workshops they hold for national delegates and WTO Secretariat staff as opportunities for 'information-sharing' and 'brokering of knowledge', rather than attempts to advocate particular positions or courses of action. They also position themselves as providers of expert information that can lead to progress in trade negotiations. One NGO programme director I interviewed, for example, told me that 'what we're trying to do is facilitate a better understanding of the problem, we're trying to contribute a better conceptualisation of the issues, and in that way try to see what the solutions are'. The Geneva NGOs' will to inform is not mobilised only in interactions with representatives of the WTO, however; it also gives structure to their interactions with NGOs and other types of civil society organisations in the rest of the world. According to an interviewee at the Geneva office of a large international NGO, for example, disseminating information about the WTO and its activities both inside and outside the NGO's network is an important part of the work carried out by the office. As he put it, 'it's important that local groups and organisations get the information, that

they understand why it's important, and can do their own advocacy'. This emphasis on information, and on transmitting what is presented as neutral, objective information, serves to reinforce the notion that better transmission and dissemination of information is all that is required for there to be a constructive relationship between NGOs and the WTO. It also constructs these Geneva-based NGOs as knowledge-brokers that know more, or know in more appropriate ways, than other parts of 'global civil society'.

## *Responsibilisation*

The second governmental technology that can be observed at work across the different spaces of interaction is 'responsibilisation'. Scholars working in the governmentality tradition understand 'responsibilisation' as a logic or dynamic inherent in many forms of liberal government, wherein the subjects of particular governmental strategies or programmes are constructed as responsible for outcomes which affect them as individuals, whether in relation to their education, health or welfare, or the smooth functioning of organisations or processes (see e.g. Cruikshank 1999; Joseph 2009; Lemke 2002). In the context examined here, responsibilisation entails constructing NGOs as responsible for ensuring their relationship with the WTO functions smoothly and properly, rather than imputing responsibility, for example, to the WTO Secretariat or member governments, or a combination of these. NGOs are held responsible for ensuring, for example, the quality and relevance of discussions that takes place in the different spaces of interaction, for successfully bringing any concerns they have about WTO policies to the attention of WTO Secretariat staff and delegates, and for understanding the procedures through which decisions are made in the WTO and the formal and informal rules which govern the WTO's interactions with civil society. Responsibilised NGOs are also expected to avoid disrupting the ongoing work of the WTO in any way, and to avoid using any information gained through interacting with representatives of the WTO against the organisation.

The technology of responsibilisation is instantiated through a number of techniques and practices, some of them embedded in the WTO's official programmes and initiatives for NGOs, others more informal and enacted by individuals on a more personalised basis. Pascal Lamy, for example, in his inaugural speeches at the Public Forums as Director-General of the WTO, regularly calls forward a responsible, active and participatory civil society, whose representatives should bring useful, constructive contributions to WTO debates. 'Let me be clear', he announced to the NGO representatives, academics, journalists and staff of other international organisations present at the opening session of the 2007 Public Forum, 'the WTO is looking for your contribution, it needs you to help

shape its agenda'.<sup>59</sup> In his speech at the 2008 event, he invoked similar notions of a responsible, participatory civil society, calling on 'civil society to continue bringing its ideas and solutions forward. It is only with your active participation that the WTO can come to reflect the type of institution you seek for the future.'<sup>60</sup> The *World Trade Report 2007*,<sup>61</sup> one of a series of yearly reviews and analyses of the multilateral trading system published by the WTO, is even more direct in its invocation of an active and participatory civil society, whose representatives are responsible for ensuring the quality of participation and debate in the Public Forums. According to the report, 'the quality and interactive nature of the discussions at the Public Forum depends crucially on the organisers and participants' (WTO 2007: 337).

Responsibilising logic and practices also permeate the formal procedures and processes through which the content of the Public Forums is determined. The Public Forums are mainly composed of parallel panel presentation and discussion sessions which have been proposed by individual or, increasingly commonly, groups of NGOs, and have been selected for inclusion in the programme by the WTO Secretariat. Although the overall theme of the conference is set by the Secretariat (usually around six months before the Public Forum takes place), NGOs and other types of civil society actors are responsible for putting together panels and combinations of speakers, which can, as one interviewee in the Secretariat put it, 'really engage those that are in the audience'. Individuals or organisations interested in proposing panels are encouraged to include 'renowned speakers' and a 'variety of perspectives' in their panels, in order to attract and retain the audience of academics, national delegates, members of the WTO Secretariat and other international organisations and other representatives of civil society that attend these events. NGOs are thus constructed as responsible for ensuring the quality and relevance of the discussion that takes within the Public Forums, and, by extension, the very success of these events.

The technology of responsabilisation can also be observed in the way officials in the WTO Secretariat tend to deal mainly with a core group of Geneva-based NGOs, particularly on a day-to-day or informal and ad hoc basis. Although the Secretariat does maintain a number of spaces of interaction which are open to non-Geneva-based organisations, including the NGO Centres at Ministerial Conferences and the annual Public Forums, and officials in the Secretariat happily respond to email or telephone queries from

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<sup>59</sup> The text of the 2007 speech is available here:  
[http://www.wto.org/english/news\\_e/sppl\\_e/sppl73\\_e.htm](http://www.wto.org/english/news_e/sppl_e/sppl73_e.htm)

<sup>60</sup> The text of the 2008 speech is available here:  
[http://www.wto.org/english/news\\_e/sppl\\_e/sppl101\\_e.htm](http://www.wto.org/english/news_e/sppl_e/sppl101_e.htm)

<sup>61</sup> Available here: [http://www.wto.org/english/res\\_e/booksp\\_e/anrep\\_e/world\\_trade\\_report07\\_e.pdf](http://www.wto.org/english/res_e/booksp_e/anrep_e/world_trade_report07_e.pdf)

organisations anywhere in the world, the focus of efforts to engage and interact with NGOs is overwhelmingly Geneva-oriented. The Secretariat interacts primarily and most frequently with NGOs that have been able to establish offices in Geneva, and it is assumed that these organisations transfer the information and perspectives gleaned from their interactions with the Secretariat through their networks to other parts of 'global civil society'. Officials in the Secretariat thus leave much of the responsibility of transmitting information and constructing global networks around trade issues to the core group of Geneva organisations with which they regularly interact. As one of my interviewees, an advisor in a Geneva-based NGO, explained:

I think you can look at the broader interaction ... , [and] what is interesting is of course as most organisations grow, even like the UN, different parts of the UN, it's always convenient for the organisation to say let's have a sort of focal point, or some kind of group of NGOs who will somehow be the gatekeepers, and so you then delegate the responsibility of too many groups.

The Geneva-based NGOs that have most access and space to interact with representatives of the WTO are thus also made responsible for ensuring that information and demands flow smoothly between the WTO and NGOs and other groups around the world who have an interest in global trade policy-making.

### *The Logic of Competition*

The third technology of government at work in these spaces, what I have termed the 'logic of competition', is closely connected to the technology of responsibilisation, and incorporates some of the same governmental techniques and practices. It works through placing NGOs in a position where they and the perspectives they represent have to compete for space and recognition in official forums and meetings. In some cases, an official in the WTO Secretariat acts as an arbiter or referee in the competition for space and recognition; in other cases, the selection occurs through what we might call 'social selection', whereby individuals and organisations compete for space and attention, and winners emerge dependent on their capacity to survive by satisfying WTO expectations and preferences. The logic of competition thus places NGOs in a position where they are encouraged to compete rather than cooperate with each other, which places particular limits on the possibilities of action of organisations that do not satisfy the necessary expectations.

The logic of competition is particularly evident in the processes through which the annual WTO Public Forums are organised, and participants are selected by the

Secretariat for inclusion in the programme. As mentioned in the discussion of the technology of responsabilisation, would-be presenters and organisers of panels at the Forums are invited to submit proposals of panel topics and content to the Information and External Relations Division approximately six months in advance of the event. The Secretariat generally receives more panel proposals than can be accommodated in the space and time made available for the Public Forums, and officials therefore select participants and panels based on their perceived capacity to engage the audience and make high-quality contributions to debates. The competition that this selection process generates between different organisations, voices and perspectives is understood and presented by WTO officials as increasing the quality and relevance of the Public Forums. As one interviewee in the Secretariat explained:

the idea behind [the process] was to have competition. And competition, we have 42 workshops [at the 2008 forum], and on average, there's a parallel system of five at the same time, so people have to choose, and that competition has worked great, because the number of people attending has increased.

The rules that govern this 'competition' and determine what kinds of organisation and what kinds of perspective win space and recognition, favour organisations and individuals that can engage in policy-focused and technical debates, that do not challenge the frameworks and assumptions underpinning WTO activities and that help national delegates explore and refine their negotiating positions. Academics, trade delegates and ambassadors, government officials and officials at international organisations typically make up a high proportion of panel participants at the forums, and the debates that take place in the panel sessions are frequently highly technical and based on economistic ways of understanding and conceptualising problems. I was present, for example, at the 2008 Public Forum, and was initially rather surprised at the extent to which 'expert' voices, such as academics, ambassadors and government officials, dominated the programme, and the lack of space and recognition given to more grassroots organisations and members of the 'public'. A typical panel at the forum was composed of a combination of academics, trade delegates, ambassadors, officials at other international organisations such as the various UN agencies, the International Monetary Fund, the World Bank and the International Labour Organisation, government officials, and sometimes, but by no means always, included representatives of NGOs and other types of civil society organisations.<sup>62</sup> The 'capacity to engage the audience', the criterion applied by the Secretariat when determining the contents of the Public Forum, in practice seems to mean contributing technical understanding and solutions to already recognised problems.

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<sup>62</sup> The programme is available here:

[http://www.wto.org/english/forums\\_e/public\\_forum08\\_e/programme\\_e.htm](http://www.wto.org/english/forums_e/public_forum08_e/programme_e.htm)

## *Trust as a Technology of Government*

The fourth governmental technology is what I call 'the governmental use of trust'. Trust plays an essential role in the relationship that has emerged between the WTO and NGOs, which functions both to regulate NGO access to particular individuals and types of information in the WTO, and to keep civil society activities and demands within acceptable, non-disruptive limits. Trust, on the one hand, has emerged between officials in the Information and External Relations Division, certain delegates who have developed close working relationships with NGO representatives, and those who work in a core group of Geneva-based NGOs as a natural consequence of regular contact and exposure over the past fifteen years (see also Matthews 2007: 1373). Trust has also been consciously sought and cultivated by both the WTO and NGOs, in order to gain better access to information and to attempt to shape behaviours and attitudes.

Trust, and the presence or absence of trust, functions as either a gateway or barrier to participation in certain spaces and types of interaction between the WTO and civil society organisations. Many of the channels of communication between Secretariat staff, national delegates and NGOs are only open and publicised to organisations and individuals who have proven themselves to be trustworthy. The informal briefings delivered by staff from the WTO's Information and External Relations Division to mainly Geneva-based NGOs, for example, are only open to reliable individuals who are willing to comply with the condition that nothing from the briefing be quoted or attributed to the Secretariat in any way. As mentioned earlier, individuals who behave in an untrustworthy way and, as one interviewee in the Secretariat put it, 'violate this unwritten rule that it's informal and off-the-record', are not permitted access to these spaces of interaction. The badge programme which gives selected NGOs free access to the WTO building, similarly, only involves Geneva-based NGOs whose staff have, over years of interacting with WTO representatives, proven themselves to be trustworthy and capable of behaving as professional, non-disruptive contributors to the work of the WTO. Trust also serves as a gateway to informal contact and informal sharing of information and interpretations with Secretariat staff and national delegates. As one official in the Secretariat told me, 'of course if I don't know somebody I would be more careful probably with what I'm saying. If you know somebody and you know you can trust the person you may be a bit more open and share your personal views.' In short, proving oneself to be trustworthy and willing to respect the informal rules of the game allows entrance to more informal spaces of interaction and communication with representatives of the WTO, in which interpretations and personal opinions are shared more openly and more frankly than in the spaces of interaction accessible to all.



Alongside permitting access to more informal and less carefully packaged types of information, the presence of trust between NGOs and Secretariat officials and delegates also functions as a controlling or limiting influence on these organisations' activities. If trust, and generally behaving in what is seen as a trustworthy way, is one of the qualities that regulates access to meaningful information and interaction, this creates a strong incentive for individuals to abide by any explicit or implicit rules about what can be done with any information obtained. It becomes in the organisations' perceived interests to comply with any conditions attached to participation in these communicative spaces, even if the interests of the networks and constituencies they purportedly represent would be better served by disregarding them. Participation in the regular informal briefings provided by officials in the Information and External Relations Division, for example, is dependent on never quoting the source of any information obtained in the briefings. Although insider information from trustworthy sources might be valuable for non-Geneva-based NGOs in their efforts to monitor and put pressure on state officials over trade policy, NGOs present at the briefings are never able to circulate it as such. As an interviewee in one Geneva NGO told me, 'we recognise that these briefings are very valuable, so we don't want to shoot ourselves in the foot by doing anything to interfere with them.'

Although the emergence of trust between individuals who regularly interact over an extended period of time is a normal part of human social behaviour, the governmental use of trust also works through conscious efforts to cultivate trust and trusting relationships. NGOs that have been successful at generating and maintaining close working relationships with WTO Secretariat officials and national delegates, have, for example, simultaneously sought to build the trust of these officials and show themselves to be trustworthy, in order to convince them that they are legitimate and worthy partners in dialogue and to reap the benefits seen to accrue through closer interaction. Interviewee in Geneva NGOs talked about the value of playing by the rules of the game set by the WTO Secretariat, including not using information acquired from the informal briefings against the Secretariat and not quoting the Secretariat as a source, in order to show that NGOs and the WTO can work together 'in a professional way'. The Information and External Relations Division has also deliberately sought to build trusting, constructive relationships with NGOs, and staff in the division recognise the benefits, such as information about NGO activities and concerns, that flow from these. The governmental use of trust thus relies on both spontaneous reactions and calculated actions on the part of certain Geneva-based NGOs and officials in the WTO Secretariat. Both the Geneva-based NGOs and the WTO Secretariat therefore facilitate and make possible the use of trust as a technology of government in the field of civil society-WTO interactions.

## Conclusion

This chapter has focused on the technologies of government that structure the possibilities of action of would-be participants in dialogue between civil society and the WTO. After outlining the main spaces and channels in which civil society-WTO interaction takes place, the chapter identified and outlined four governmental technologies that operate across these spaces: (1) the 'will to inform' that constructs civil society-WTO interaction as neutral exchanges of information and marginalises other types of interaction; (2) the technology of 'responsibilisation' that seeks to create an active, self-regulating, participatory civil society that is itself responsible for ensuring the quality of the civil society-WTO relationship; (3) the 'logic of competition' that places civil society organisations in competition for space and attention according to certain criteria; and (4) the use of 'trust as a technology of government' in order to keep civil society activities within acceptable limits. In combination, these technologies of government have created a terrain of interaction between civil society and the WTO in which individuals who wish to participate in meaningful dialogue and interaction with WTO representatives are required to present their interventions as information exchange, take responsibility for providing the type of information and interaction the national delegates to the WTO demand, compete with other civil society actors for space and attention, and behave in a way which causes no embarrassment or disturbance to the WTO and its regular activities.

In Chapter Seven, I explore some of the implications of these technologies of government for the possibilities of action of the different types of civil society organisations trying to engage in debates about TRIPS, traditional knowledge and biodiversity. Two points are worth mentioning here, however. The technologies of government identified in this chapter have, firstly, differential effects on different kinds of civil society organisations. Organisations willing and able to engage in the type of information exchange considered acceptable to Secretariat staff and delegates, to compete for space and attention according to the implicit criteria in this social field, and to behave in a way which causes no embarrassment or disturbance to the WTO, obtain preferential access to information and individuals, albeit with limitations on the kind of actions that are possible. Organisations that are unable or unwilling to comply with the requirements and preferences in this social field find themselves with fewer opportunities for meaningful interaction with Secretariat officials and national delegates, and their perspectives and voices sidelined and marginalised in debates. In the specific case being examined in this study, what has happened in practice is that a core group of Geneva-based organisations have emerged that are happy to conform to, and indeed play a significant role in maintaining, the logics inherent in these governmental technologies, while other organisations around the world, including

indigenous associations, are invisibilised and can find little way into official dialogue and debate. The practices and procedures which transmit and support these governmental technologies emanate, secondly, from a variety of sources, including the WTO Secretariat, national delegates to the WTO and the core group of Geneva-based NGOs that regularly interact with representatives of the WTO. These Geneva-based NGOs might also be considered partly responsible, therefore, for maintaining and supporting these governmental technologies, and for the structuring and governing effects that emerge from them in the field of civil society-WTO interactions.

## Chapter Six

# Inciting Global Civil Society: Legitimate Subjectivities and Subjectification

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In this chapter, I turn my attention to the processes of subjectification at work and the forms of subjectivity being encouraged in the field of civil society-WTO interactions. As outlined in Chapter Two, subjectivity is understood, in the perspective underpinning this study, as an important field or terrain through which governmental processes can operate. Appropriate subjectivity is understood to be necessary for the smooth functioning of a governmental regime, and is conceptualised as a potential target or site of governmental actions and interventions. Governmental processes and technologies may work to instil particular values, self-understandings and attitudes in the relevant group or population, and to encourage certain kinds of governable subjects. They may likewise discourage less desirable, more disruptive forms of subjectivity and associated behaviours, and discipline or exclude those individuals and groups who do not conform to the desired models. The processes through which appropriate qualities, logics and attributes are encouraged, and through which subjects come to identify themselves as particular kinds of subjects, can be referred to as 'subjectification'. These processes are not straightforward or linear, however, and may provoke counter-conducts and counter-subjectivities which seek to disrupt the logic carried within them.

The chapter is divided into three sections. In the first, I outline some of the channels and sites through which particular forms of subjectivity are being encouraged in the field

of civil society-WTO interactions. In the second, I focus on the forms of subjectivity that are rewarded and promoted in this field. I identify a series of figures, including 'the anonymous contributor', 'the pragmatist', 'the technical expert' and 'the responsible member of the trade community', that represent acceptable subject positions for members of 'global civil society' who wish to interact with representatives of the WTO. In the third section, I explore some of the flexibilities and attempts to subvert these acceptable subject positions, and examine what space is available for other forms of subjectivity in this social field. The sections, in combination, illustrate the ways in which subjectivity is implicated as both a site of government and of contestation in the field of civil society-WTO interactions.

## Sites and Processes of Subjectification

Subjectification, as discussed in Chapter Two, is understood to take place not through techniques of domination or control, but through what Foucault has called the 'government of the self' (2005: 252), in which subjects' own efforts to conform to the categories and logics inherent in discursive formations leads them to identify with and enact particular subject positions. Subjectification is an iterative, inherently social process, which is only ever variably successful, as it works to the extent that subjects themselves come to experience themselves through and identify themselves with the relevant forms of subjectivity. In this section, I identify a number of processes of subjectification at work in the field of civil society-WTO interactions which foster, elicit and reward particular forms of subjectivity in individuals who seek to interact with representatives of the WTO. The discussion is not intended to provide an exhaustive summary of the mechanisms of subjectification at work in the field of civil society-WTO interactions, but rather to illustrate some of the social processes through which particular forms of subjectivity are elicited and rewarded. I identify and discuss three processes of subjectification: (1) the normalisation of certain roles, behaviours and practices; (2) WTO Secretariat decisions about which kinds of organisations and which individuals should be given access and space to present their work and opinions about WTO policy and ongoing negotiations; and (3) the operation of what I term 'disciplinary communicative norms', which require would-be participants in dialogue to adopt certain modes and styles of communication.

The first process of subjectification operating across the different sites and spaces of civil society-WTO interaction discussed here is what I call *the normalisation of certain roles, behaviours and practices*. This process is particularly evident in the Geneva-based spaces of interaction, where Geneva-based NGOs, national delegates to the WTO and

members of the WTO Secretariat have been taking place for over ten years. As the individuals involved have become ever more used to working and interacting together, and reputations for carrying out certain types of work have become established, certain expectations have developed about what kind of behaviours and what forms of subjectivity are required if the relationship between the WTO and globalising civil society is to function smoothly. The Geneva-based NGOs have played a central role in these processes: they have been able, over time, to analyse what kinds of practices and attitudes are considered acceptable by national delegates and Secretariat staff, and to find or create acceptable niches or subject positions to occupy. They have worked out, for example, that providing what is presented as technical advice is appreciated and rewarded, as is making space and resources available to help national delegates understand and develop positions on negotiating issues. These niches and subject positions, along with the practices that sustain them, have, I suggest, become normalised and now help define acceptable subjectivity in this field of activity.

A second process of subjectification involves more conventional forms of power and control, and consists of *decisions made by the WTO Secretariat about which organisations and which individuals should be given access and space* to present their viewpoints in both private and public meetings and discussions. The Information and External Relations Divisions plays a particularly important role here: as the division responsible for convening WTO events involving civil society, providing briefings to selected NGO representatives, and making information available to civil society organisations, staff in the division regularly make decisions about which individuals and organisations to invite into the formal spaces and processes administered by the Secretariat. The content of the annual Public Forums, for example, is determined through a process in which interested members of 'civil society' submit panel proposals to the Information and External Relations Division four to six months in advance of the event, who decide which panels and topics to include in the final programme. One of the officials in the division explained to me: 'we're looking for panels with renowned speakers, different perspectives, a variety of speakers and to really engage those that are in the audience'. Staff in the division thus determine which individuals and organisations can present their perspectives and viewpoints in the Public Forums, and, in seeking individuals who will 'really engage those that are in the audience', are actively involved in policing the forms of subjectivity that are admitted into this social sphere. Decisions made about which individuals and organisations to invite to the regular, informal briefings held for Geneva-based NGOs similarly feed into and reflect ideas about what constitutes acceptable subjectivity. In practice, only NGO representatives who are personally known to staff in the division, and have shown constructive, non-confrontational attitudes towards the WTO, are invited: at the time of carrying out this study, this amounted to between 20 and 30 Geneva-based NGO representatives who

were trusted and known, as one of the NGO programme officers I interviewed put it, to 'play by the rules'.

A third process of subjectification works through what I call *disciplinary communicative norms*, which require participants in interaction and dialogue to adopt suitable modes and styles of communication. These norms are particularly evident in the annual Public Forums, which bring together a broad range of NGO representatives, academics, national delegates and diplomats, and staff of other international organisations, some of whom are accustomed to interacting and working together in Geneva, while others are not part of what several interviewees referred to as the Geneva-based 'trade community'. Communication in the Public Forums is structured according to an implicit set of communicative norms, which value, for example, orderly turn-taking, emotional detachment and making articulate, dispassionate and measured contributions to the discussion. Panel discussions take place in a formalised, almost ritualised manner, following what Iris Marion Young has termed the norms of 'articulateness', 'dispassionateness' and 'orderliness' (2000: 56). These communicative norms support and underpin the legitimate forms of subjectivity discussed in the next section, as they represent qualities which are sought after and valued in a number of the positions, including 'the pragmatist' and 'the non-challenging interlocutor'. Transgressing these norms leads to disapproval and ostracism by other Forum participants. In one session in the 2007 Public Forum, for instance, I observed an exchange between the moderator of a panel session and a member of the audience, in which the moderator dismissed the comments made by the audience member for not being expressed according to appropriate communicative norms. The audience member, a Francophone African, had commented on the fact that the panellists' presentations in the session had all relied heavily on Powerpoint slides, which were dense with information, but only written in English. He pointed out that making the information available in the WTO's other two official languages, French and Spanish, would have allowed non-English speakers to better follow the presentations and participate in discussion, and spoke in a more embodied, animated and passionate style than is the norm in the Public Forum. The moderator immediately dismissed the comment as impolite and improper, seemingly on account of the style of expression: 'Monsieur, vous n'êtes pas poli' (Sir, you're not being polite), she repeated several times. These disciplinary communicative norms thus function as another mechanism through which appropriate forms of subjectivity are promoted, and forms of subjectivity that are considered disruptive or challenging are dismissed as illegitimate and improper.

## Legitimate Subjectivity: A Matrix of Acceptable Subject Positions

I now turn my attention to the particular forms of subjectivity that are elicited and rewarded in the field of civil society-WTO interactions. As just discussed, appropriate forms of subjectivity are encouraged and elicited through a number of channels and processes, including the normalisation of certain roles and practices, and decisions made by the WTO Secretariat about who to invite into the various spaces of official communication. Members of 'global civil society' are just as involved in the creation and maintenance of acceptable subject positions as other participants in the field: the processes of subjectification discussed have emerged through constant interaction between NGO representatives, national delegates and trade officials and staff in the WTO Secretariat. I identify and illustrate six subject positions that represent what have come to be considered acceptable or desirable behaviours, qualities and attitudes in this field of interaction: 'the aide', 'the technical expert', 'the anonymous contributor', 'the pragmatist', 'the non-challenging interlocutor', and 'the responsible member of the trade community'. These subject positions in combination represent, I suggest, the main contours and boundaries of acceptable subjectivity in the field of civil society-WTO interactions.

### *'The Aide'*

'The aide' is docile, biddable subject position, called upon to bring expertise and analytical skills to bear on issues already recognised as concerns by national trade delegates and members of the WTO Secretariat. The activities of 'the aide' are constrained by the 'global civil society is not that relevant' discourse discussed in Chapter Four, which sees trade officials and national delegates as the only groups that are properly mandated to negotiate and make decisions about international trade policy. Allowing members of 'global civil society' too much influence or latitude in their interactions with officials and delegates is thus understood to contravene the state-based underpinnings of the international trade regime. Many would-be participants in dialogue with the WTO, as discussed in Chapter Four, contest these assumptions, arguing, for example, that the WTO, unlike its predecessor GATT, has such an impact on public policy that the presence or even participation of NGOs and other interested members of the public in the trade policy-making arena is entirely appropriate. It is out of this tension between the state-centric logic underpinning the multilateral trading system, and the challenge to this logic articulated by certain sections of civil society, that the compromise subject position of 'the aide' has emerged. 'The aide' may interact fairly closely with trade officials and delegates, and thus have some kind of presence in



trade policy-making circles, but the interests and identity of 'the aide' are clearly subordinated to those of the trade officials and delegates.

The main characteristics of 'the aide' include a willingness to provide material and technical support and assistance to national delegates, particularly those from developing countries who may lack what they perceive to be sufficient resources, support and expertise from their national governments, and the ability to anticipate delegates' needs and requests for assistance. 'The aide' is also expected to understand and be prepared to think within the logics and rhythms of trade negotiations, and be willing to act when called upon by national delegates, but remain suitably on the sidelines at other times. 'The aide' is thus only summoned and permitted a presence when national delegates feel support is required. As one NGO director put it, many developing countries only work with NGOs 'if they feel that civil society groups can enhance their interests'. 'The aide', moreover, is expected to recognise that personal interests and priorities are subordinate to those of the delegates, and must not be seen to be pushing a personal agenda in interactions with national delegates. According to another Geneva-based NGO programme director, the question 'what do you want to do?' has to be the starting point in discussions and interactions with national delegates. Any sense that NGOs are simply pushing their own agenda and interests will result in conversations being shut down and interactions curtailed. The opinions and analysis that 'the aide' can provide are thus welcomed and valued, but must be presented in a way which does not challenge the authority of the delegates. Other Geneva-based NGO representatives talked, for example, about how they 'raise their concerns to the delegates', or 'tell them that we have noticed that there is a problem in this specific issue', so 'maybe you should put emphasis on this particular point', when meetings and seminars take place. Support and advice are thus provided and presented when required in a non-challenging, non-threatening way.

The types of activities 'the aide' may carry out include organising and facilitating meetings and seminars between national delegates who wish to discuss issues of mutual concern, and inviting relevant 'experts' from other civil society organisations or from academia to present their interpretations and advice. One national delegate I interviewed, for example, warmly praised the work carried out by an NGO that made a neutral space available for a series of meetings between national delegates to the WTO and invited representatives of 'global civil society' in 2006, providing lunch and covering the expenses of particularly sought-after experts from outside Geneva. 'The aide' may also be asked to write papers to help delegates better understand the issues at stake in negotiations, or to identify suitable experts and commission research papers if there is a need for additional expertise. One NGO researcher recounted, for example, that, 'the

African Group wanted a study on Geographical Indications, so they said that they needed a paper on this issue because they don't have an assessment of Geographical Indications in Africa. So we received a request and we asked an expert to write a paper'. 'The aide' may also be called upon to provide more specific assistance, such as analysing what should be included in position papers to be presented in the different Councils in the WTO, or the most appropriate way to structure them. Another Geneva-based interviewee explained how delegates sometimes appreciate assistance working out 'how one would structure things, what information is needed, what arguments are relevant, what evidence'. The interviewee was clear that such assistance is only provided when delegates decide that they need it, either as a result of their own analysis or analysis provided by other observers. According to an interviewee in another of the Geneva NGOs, there's been 'a big evolution in the way that developing country delegates relate to NGOs. They used to be very reluctant to deal with them, but they have now realised how they can use NGOs positively in pursuit of their own goals, how NGOs can support them in their work'.

### *'The Technical Expert'*

'The technical expert' is one of the most valued subject positions in the field of civil society-WTO interactions, called upon to help national delegates understand and explore the policy implications of particular negotiating issues, and also valued as a sounding board by WTO Secretariat staff. Performing the role of 'the technical expert' requires familiarity and ease with the technical vocabulary and concepts typically used in WTO negotiations and official documents, as well as a detailed understanding of trade policy-making processes. Individuals who wish to follow developments and to participate in discussions with trade officials about the substance of their work either have to already understand the highly technical debates and terminology, or have had to learn the particular logics and vocabulary of the trade sphere. As one interviewee in Lima put it:

Las organizaciones sociales, por lo menos las que conozco en varios países de la región, no cuentan con equipos técnicos que pueden decir vamos a hacer el seguimiento de eso. Entonces ha habido un aprendizaje, por hacer que se pongan al día en la discusión, encargar estudios, responder. Pero siempre con una enorme desventaja. Una enorme desventaja, porque la sociedad civil que más representada está en eso, por decirlo de una manera, si tú tienes una visión amplia de sociedad civil, son los empresarios.

Social organisations, at least the ones I know in various countries in the region, don't have technical teams that can say let's monitor all of this. So there's been a learning process, so that they can keep up to date with discussions, commission studies and respond. But always with an enormous

disadvantage. An enormous disadvantage, because the civil society that's most represented in this, to put it one way, if you adopt a broad view of civil society, it's businesspeople.

The subject position of 'the technical expert' not only involves familiarity with technical vocabulary and concepts; it also relies on a discursive move that constructs trade policy making as a technical rather than a political activity. As the director of a Geneva-based NGO commented in relation to debates about TRIPS, traditional knowledge and biodiversity, 'they try and keep it legal [but] it's an essentially political debate. It's the perfect museum specimen of the wicked corporations imposing their will on poor farmers' (see also May 2005: 164). Performing the role of 'the technical expert' thus also requires presenting viewpoints and contributions to debates as technical rather than political interventions: knowledge must be presented as objective, evidence-based and balanced, rather than advocating a particular position or course of action. According to an interviewee in the Secretariat:

I can only respond for myself, but I certainly think the more objective approach, I think that's the way to do things. I would explain something to you, but I would leave you the decision-making to you, because you may be in a particular national environment that I cannot necessarily assess, so you may be much better placed to take the final decision.

In the case of debates about TRIPS, traditional knowledge and biodiversity, it is legal expertise that is most valued and legal experts, whether academics or trained lawyers, who are sought out and accorded most space and status when interactions do take place. Researchers and programme coordinators I interviewed in Geneva-based NGOs that maintain relatively close working relationships with both national delegates and members of the WTO Secretariat use terms, for example, like providing 'technical assistance' or 'technical support' and 'legal expertise' to delegates, or 'facilitating understanding' of legal and technical issues, when they talk about the type of role they play in trade policy-related circles in Geneva. They attribute their ability to maintain this type of relationship with national delegates and Secretariat officials, and their success and visibility as organisations, to the level of expertise they are able to make available to delegates, and to the accuracy and quality of their research and publications. According to one of these interviewees:

The WTO Secretariat ... reads a lot of our materials. We engage with them, because we're also very keen to get it right, to get their expert opinion. And I would say most of the time they're very happy with the work that's produced. That was also true in the intellectual property area. They might

not like the conclusions or agree with particular emphasis placed, but they're not going to dispute the quality of the research and analysis.

Delegates and officials in the WTO Secretariat also emphasised the value of the technical assistance and the quality of the research that these organisations provide. One national delegate I interviewed praised the technical assistance offered to delegates by the Geneva-based NGOs who work on intellectual property-related issues, and even attributed some of the progress made in negotiations to the support these organisations have provided. The fact that countries like Brazil, India and Peru were able to ensure that the protection of traditional knowledge became and remained part of the negotiating agenda in the TRIPS Council is, as he sees it, 'in part because civil society were next to us, in order first to understand, and second to analyse how to present this, to draft papers and to understand what the best strategy is and which alliances would be best'. Another delegate emphasised the importance of NGOs providing well-researched, rigorous and technically proficient reports and publications. As he put it, 'as a delegate, you need them to be professional. You need data, research, the right arguments. You have to be able to convince people that have a stake in the negotiations'.

This 'technical assistance' and 'legal expertise' that NGOs provide need not necessarily come from within the organisation, however. A reasonable understanding of the technical issues, and connections to individuals with a high level of technical expertise can be sufficient to at least partially occupy the position of 'the technical expert'. An interviewee in one of the Geneva NGOs that enjoy close working relationships with the WTO commented that:

We like to think we know something about these issues. We're not necessarily experts, but we have a certain understanding of the problems, we can identify what the main issues are. If we need support, we have a network of highly qualified experts that will support our work. We organise a lot of collective work, and commission papers from experts on particular issues.

Specialist technical and legal knowledge and technical assistance, whether generated inside a civil society organisation or transmitted through the organisation from another source, is accorded privileged status in the field of civil society-WTO interactions, and is what national delegates in particular are believed to want from 'global civil society'. According to a Geneva-based NGO programme director, 'delegates are very aware of the distinction between technical assistance and advocacy, they take what's useful to them and discard what they feel is advocacy'.

This special status or visibility of legal experts and other individuals who can understand and contribute to debates at a technical level is not only apparent in the Geneva-based spaces of interactions but also in interactions between the Peruvian state and Peruvian 'civil society'. Officials in government ministries involved in determining Peru's internal and external policies on traditional knowledge and biodiversity interact almost exclusively with one civil society organisation, an NGO composed primarily of lawyers. According to an interviewee in one of the government ministries, one of the legal experts working in this NGO 'es él que más conoce en todo el Perú. Es él que más conoce, y con él hemos trabajado desde el principio estos temas' (he's the person who knows the most in the whole of Peru. He's the person who knows the most, and we've worked with him on these issues since the beginning). Other NGOs that have an interest in issues relating to traditional knowledge and biodiversity but lack the technical and legal expertise, or that 'se oponen a este tema, a la relación con la propiedad intelectual' (are opposed to the topic, to the link with intellectual property) are not, as discussed further in Chapter Seven, accorded anywhere near the same space and status.

There are, nevertheless, limits to the discursive space and deference accorded to 'the technical expert' by delegates, trade officials and Secretariat staff. One national delegate I interviewed, for example, recounted how, at a certain point in a series of discussions that took place between delegates and academics, researchers and/or advisors working in Geneva-based NGOs in 2006, 'we had to tell them to please stop discussing some very fine detail', such as the difference between 'disclosure' and some other legal concept. 'We needed to find a working concept', he explained, 'we couldn't get stuck discussing fine details like that'. He concluded that 'apart from that, they were really helpful. We needed the technical input from them, they have the technical expertise'. 'The technical expert' is thus valued and encouraged only to the extent that performing this role does not conflict with other permissible subject position, such as 'the aide' and 'the pragmatist'. These comments also reveal quite clearly where authority and agenda-setting power are perceived to lie: 'the technical expert' may be valued and called forward in interactions with representatives of the WTO, but is still, like 'the aide', in a subordinate position vis-à-vis the national delegates.

### *'The Anonymous Contributor'*

'The anonymous contributor' shares some of the same qualities and characteristics as 'the aide', and is another of the subject positions that is particularly preferred and encouraged by some national delegates. 'The anonymous contributor', like 'the aide', provides support and assistance to delegates, and may be called upon to carry out a number of tasks, such as helping to prepare position papers or developing arguments to

defend particular negotiating positions. Where the 'anonymous contributor' differs from 'the aide', however, is in the emphasis placed on acting in a discreet, restrained and unobtrusive manner, and in not overtly publicising the particular activities and services performed. NGO researchers and directors I interviewed gave me numerous examples of assistance and support they had provided to national delegates on an anonymous and confidential basis. One of them explained how, for example, whenever any specific assistance is provided to the national delegates or any work is carried out on their behalf, the organisation never 'put their name on it' or publicise their efforts or specific involvement, so that the delegates themselves 'can take ownership of the work'. Another of them told me that his organisation does not advertise the type of technical assistance they provide to national delegates, and never report the details of any advice given or private meetings held with delegates. This organisation has 'an added advantage', furthermore, in that they are trained lawyers, and thus able to 'give legal advice on a confidential basis'.

Some individuals and organisations seem able to combine performing the role of 'the anonymous contributor' with other subject positions without too much difficulty. One interviewee talked about performing different roles as 'putting on different hats'. When providing technical support to delegates, he puts on his 'technical assistance hat'; in other contexts, including interactions with developed country delegates who do not share the organisation's concerns and objectives, or in other forums where more explicit or political goals are being pursued, he puts on his 'advocacy hat'. Enacting different subject positions in different contexts is not perceived to harm relationships with national delegates, provided that the organisation as a whole is transparent about its aims and that its staff are seen to act in accordance with those aims. 'The anonymous contributor' can thus co-exist alongside other more public and more challenging subject positions in some organisations and individuals, and only be called upon in certain types of interactions and contexts.

Other organisations have built their entire reputation and niche in the field of civil society-WTO interactions around enacting the role of 'the anonymous contributor'. As a programme director in one such organisation explained to me, meetings hosted by the organisations always take place on an 'off-the-record' basis, whether they take place exclusively between national delegates or between national delegates, NGO representatives and other 'experts', and whatever is discussed is considered confidential information and never revealed to anyone who was not present. Staff in this organisation would, for example, never discuss the details of what happened in such meetings with me. Interviewees would discuss the principles underpinning their work, and the type of meetings organised, but were clear that referring to any of the content

covered or showing me documents produced in preparation for these meetings would contravene the confidential basis on which they took place. This organisation has built up a particular position of trust with the mainly developing country delegates they work with on a regular basis based on enacting 'the anonymous contributor'. As one interviewee put it, 'we have a special niche, and we stay there'. She continued:

We try to be a place where trade partners can meet, discuss, and exchange points of view on trade issues. This is what we do, to organise off-the-record meetings and to say, ok, we can invite you and provide you with technical, legal expertise, but we don't give any kind of opinions, we just like to discuss and be a forum where you can come and discuss and exchange your positions. And I think it's good like that, because trade is very sensitive, and if you invite them and then you sort of give your own opinions, 'you should do that or', I mean that would be very sensitive, so we try to just be facilitators, to organise off-the-record meetings, to meet with people to see what their needs are, developing countries, LDCs, the African Group, and to help them benefit from trade.

### *'The Pragmatist'*

'The pragmatist' is expected to understand the underlying logics and processes that shape multilateral trade negotiations, and based on that understanding, be 'realistic' about what can be achieved by national delegates and Secretariat staff in the context of ongoing WTO work and negotiations. 'The pragmatist' can be contrasted to both 'the dreamer', who is idealistic, and analyses problems and proposes solutions on an abstract and what is perceived to be detached and 'unrealistic' level, and 'the ideologist', who does not share the goals and assumptions of trade officials, and questions or challenges the economic principles and assumptions that underpin the multilateral trading system. 'The dreamer' and 'the ideologist' are both treated as undesirable subject positions by many national delegates, trade officials and Secretariat staff, and little time or space is accorded to individuals or organisations seen to be enacting these positions. 'The pragmatist', on the contrary, is welcomed and called forward in interactions with delegates, Secretariat staff and national trade officials, as well as in broader communicative spaces such as the annual Public Forums.

National delegates interviewed in the course of this study talked, for example, about the importance of civil society organisations having realistic, well-grounded arguments and making pragmatic, realistic suggestions. This is particularly important, according to interviewees, when organisations wish to influence and feed into trade policy-making

processes, such as when they write proposals and position papers which they encourage national delegates to use and adopt. As one trade diplomat put it:

We need them to put forward serious proposals. If a delegate puts something forward, it's expected that they've considered it seriously enough. It requires a big political effort from all WTO members to consider a proposal, so the proposer needs to be able to defend it with intellectual, factual information. The problem is that sometimes these proposals are very thin, there's not much behind them.

Unrealistic, ideological and unviable proposals are not welcomed. As the same interviewee put it: 'revamping the IP system, eliminating patents, these are positions that are not politically viable. We can't propose things that are not politically realistic.'

The additional space accorded to 'the pragmatist' can also be noted at the national level. Interviewees in the Peruvian Ministry of Foreign Affairs, for example, expressed frustration at the 'unrealistic' demands and positions of many civil society organisations that seek to engage in discussion about multilateral trade negotiations. Although willing to interact with and provide information to any civil society organisation that requests it, even those who are perceived to be 'anti-trade',<sup>63</sup> Peruvian state officials would prefer civil society actors to understand trade negotiations from the same perspective as they do, i.e. as a necessary and desirable process in a globalising world, and to be realistic about what can be achieved or negotiated within them. According to one official, many of the NGOs that follow multilateral trade negotiations are guilty of adopting radical, unrealistic positions. As he put it:

Son posiciones radicales. Cuando tienen posiciones radicales, y posiciones sobre todo ideológicas, hace mucho más complejo. En vez de ayudar la negociación, incluso pueden complicarla más. Sobre todo porque debilitan la posición de los gobiernos que supuestamente quieren apoyar. Eso es un tema, el tema de la responsabilidad, el peso que tienen las ONG, ellos quieren que sean tomados más en serio. Pero para ser tomados más en serio tienen que ser más realistas. Tienen que manejarse con temas más políticos.

These are radical positions. When they have radical positions, and above all ideological positions, it makes things much more complicated. Instead of helping negotiations, they make them even more difficult. Mainly because they weaken the position of the governments they supposedly want to help. This is an issue, the issue of responsibility, the weight that NGOs have. They want to be taken more seriously. But to be taken more seriously they have to be more realistic. They need to be able to handle more political issues.

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<sup>63</sup> The organisations in question tend not to describe themselves in this manner, but as pro-development or pro-environment; if they are 'anti' anything, it is neoliberal economics.



Not only are members of civil society who do not enact the subject position of 'the pragmatist' unwelcome and undesirable according to this official, they are also positioned as naive and misguided, and as ultimately damaging to Peruvian and other developing countries' interests in multilateral trade negotiations. Another official talked about the impossibility of serious dialogue with civil society actors who adopt 'ideological' positions. As he put it, 'es al nivel ideológico donde empiezan los problemas, por ejemplo hay ONGs que no creen que el TLC pueda contribuir al desarrollo. ¿Qué puedes hacer con ellas?' (it's at the ideological level that the problems start, for example, there are NGOs who don't think that the Free Trade Agreement can contribute to development. Where can you start with them?). The other official concurred: 'anti-comercio, anti-propiedad intelectual, eso es el tema con las ONGs. ¿A qué va todo este pensamiento?' (anti-trade, anti-intellectual property, these are the themes of the NGOs. What use is all this thinking?). The primacy of trade and the need for trade liberalisation are treated as common sense by these officials; members of Peruvian civil society who challenge or question this common-sense, and are perceived to be unrealistic about the nature of international trade negotiations, are met with bafflement and frustration. To engage in interaction and two-way discussion about multilateral trade negotiations, members of Peruvian civil society must be perceived to be realistic and pragmatic about what can be achieved, and accept the common sense of ongoing trade liberalisation.

### *'The Credible, Non-Challenging Interlocutor'*

'The credible, non-challenging interlocutor', like 'the pragmatist', is expected not to question the economic principles and assumptions underlying the current multilateral trading system, and in the case of the TRIPS-traditional knowledge-biodiversity debates, the use of Western intellectual property mechanisms to protect traditional knowledge and biodiversity. 'The credible, non-challenging interlocutor' also shares a number of characteristics with 'the technical expert', notably the capacity and willingness to act as a sounding board and potential source of advice for trade officials, national delegates and WTO Secretariat staff. 'The credible, non-challenging interlocutor' is valued by both national delegates and WTO Secretariat staff, and rewarded with space and recognition in the various communicative spaces that make up the field of civil society-WTO interaction.

One of the central characteristics of 'the credible, non-challenging interlocutor' is the willingness to accept or at least not overtly challenge the liberal economic principles underpinning the multilateral trading system, and to accept that the WTO exists primarily to liberalise trade. As one national delegate I interviewed put it, 'we should

never forget what the WTO is there for: promoting free trade. Neither the delegates nor the NGOs should forget that'. 'The credible, non-challenging interlocutor' is thus expected to work, like the delegates and WTO Secretariat, within the framework of ongoing trade liberalisation, and to seek solutions to any identified problems within rather than by dismantling that framework. An interviewee in a Geneva-based NGO attributed, for example, the level of access and contact the NGO has with WTO Secretariat staff, including regular 'high-level contact with the D-G [Director-General]' to always being both publicly and privately supportive of the Doha Round of negotiations. The NGO in question does not challenge the work being carried out by delegates and Secretariat staff, and can therefore successfully occupy a subject position which requires acting as a sounding board and source of support and advice. An interviewee in another Geneva-based NGO who regularly interacts with all levels of WTO Secretariat staff, national delegates and ambassadors based in Geneva ascribed the success and level of access available to him to the credible, recognisable understanding of trade and the trade world the NGO has demonstrated. As he put it:

I can go see [Pascal] Lamy [the Director-General] any time I want, I can go see any of the ambassadors any time I want. In fact the ... ambassador's coming here today to see me about some trade matter. Why? Because we've developed a reputation for doing useful stuff that's interesting, that understands trade and is not out leftfield somewhere. That's all.

He further elaborated on the particular approach adopted by the NGO, in which concerns are raised and solutions to problems sought within the framework of trade liberalisation, rather than by attacking or seeking to dismantle it:

Our view is that trade openness should serve sustainable development. Further, we believe that an open, multilateral-based trading system can support sustainable development. And essentially you've got a choice between a trading system that rewards narrow commercial interests or one that serves the public good. We'd rather have one that serves the public good. We're trying to point out how you get from here to there. That's essentially what we do.

An acceptance of the existing trade system and the broad economic principles that underpin it, or at least the willingness and ability to frame and formulate concerns within such a framework, thus mean this organisation is taken seriously as an interlocutor, and can act as a sounding board and potential source of advice for trade officials, national delegates and WTO Secretariat staff.

'The credible, non-challenging interlocutor' is also called forward and given privileged access to government ministers in the spaces of interaction that have emerged between NGOs and the Peruvian state. The importance of trade liberalisation and the belief that

trade takes primacy over other policy areas have come, as discussed earlier, to be treated as common sense in this field of interaction, and NGOs who accept and can formulate questions and proposals in a way which does not challenge this framework have achieved particular prominence and status. Alternative viewpoints and perspectives are marginalised and squeezed out of debates. Interviewees in Peruvian NGOs talked, for example, about the impossibility of questioning or challenging the desirability of free trade in interactions with the state and in public dialogue more generally. According to an interviewee in one Lima-based NGO:

Lo que pasa es que el discurso del comercio, del libre comercio, es el discurso de la clase política en el gobierno. A pesar de que la crisis financiera te ha mostrado el contrario, ellos siguen apostando a liberalizar mercados reales y financieros. Entonces es casi como una mala palabra decir, oye, yo no estoy de acuerdo con los tratados de libre comercio, porque ellos han tenido éxito en ligar libre comercio con el desarrollo. Porque hay una fuerte concentración y convergencia de poder político-empresarial y de los medios de comunicación.

What is happening is that the discourse of trade, of free trade, is the discourse of the political class in the government. Even though the financial crisis has shown the opposite, they continue to bet on liberalising real and financial markets. So it's almost like a swearword if you say, hang on, I don't agree with free trade agreements, because they've been so successful at linking free trade with development. Because there's a strong concentration and a strong convergence between political-business power and the media.

Other interviewees in Peruvian NGOs talked about needing to learn to understand and speak the language of trade laws and theory in order to be able to participate in discussion with Peruvian trade officials. One of them told me that 'yo voy con mi lenguaje aprendiendo un poco de su lenguaje' (I go with my language, learning a little bit of their language) whenever she participates in meetings and briefings with trade officials (mostly in the context of bilateral trade negotiations between Peru and the European Union), until it is possible to be understood and recognised as a legitimate and knowledgeable interlocutor. She described how, in one meeting:

Lo que hacía era discutir desde los términos comerciales la posibilidad de enfoques sociales. Es decir la aplicación del trato nacional en las compras públicas pone restricciones para el uso de ... , que eso es importante para nuestros países porque tal o cual razón ... Cuando tú planteas un diálogo de este estilo, a veces me dicen 'se nota que usted sí sabe'. Yo no sé más que los otros sino yo lo que estoy haciendo es, es un aprendizaje también para la incidencia, estoy haciendo que en vez de hablar en árabe, hablé en un lenguaje de raíz latina de tal manera que el otro pueda por lo menos captar mi mensaje.

What I did was discuss the possibility of focusing on social issues but using the terminology of trade. For example the application of national treatment in public spending places restrictions on the use of ... , that this is important for our countries for such or such a reason ... When you set out a dialogue in this way, sometimes they say to me 'it's clear that you at least know things'. I don't know any more than anyone else, but what I am doing is, this is also a lesson for advocacy, instead of speaking in Arabic, I spoke in a language of Latin-origin so that the other person can at least grasp my meaning.<sup>64</sup>

To be considered a knowledgeable subject thus requires not only familiarity with the particular terminology and conceptual framework of (neo)liberal economics, but also the willingness and capacity to frame concerns within these terms of reference. Legitimacy and recognition as an interlocutor in discussions with trade officials thus derives from using an economics-oriented vocabulary which is recognisable to trade officials and non-challenging to their worldview.

### *'The Responsible Member of the Trade Community'*

In some respects, 'the responsible member of the trade community' is the most important of the subject positions identified, as its logic can be discerned throughout the five subject positions already discussed. It is closely connected to the discourse of 'civil society can contribute', and prescribes a number of desirable attitudes and behaviours. There are two key elements to this subject position: the requirement to act 'responsibly', i.e. in a manner which supports, or at least does not interrupt, ongoing WTO activities; and the invocation of a 'trade community', of which the member of civil society is called upon to be part. Acting 'responsibly' entails respecting the explicit and implicit rules that structure interactions between 'global civil society' and the WTO, by never quoting, for example, specific information provided in the informal briefings organised by the Information and External Relations Division. Failure to comply with these rules leads to exclusion from the trade community. Acting 'responsibly' also entails not behaving in a way which disrupts or disturbs ongoing WTO work and activities. An official in the WTO Secretariat recounted an example of how, when working in another international organisation:

we had attacks from NGOs on the phone lines of the [organisation], to basically block everything for the whole day, just to convert their views on certain things. I must say, on a personal basis, that is the point where I don't

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<sup>64</sup> This comment follows on from an earlier point in our conversation, where she likened trying to communicate with trade officials to trying to communicate with someone who only speaks Arabic or Chinese.

want to ever talk to these people again, this is not a way of dealing with people.

Such disruptive behaviour thus also disqualifies individuals and organisations from membership of the trade community.

The notion of a Geneva-based 'trade community', or in the specific case examined here, a Geneva-based 'IP [intellectual property] community', was frequently invoked by national delegates and Secretariat staff I interviewed and, albeit to a lesser extent, by Geneva-based NGOs. One national delegate, for example, referred several times to the 'IP community' in Geneva, which includes delegates and diplomats, staff in international organisations, as well as NGOs working on intellectual property-related topics. He credited the Geneva-based organisations with playing a key role in creating and maintaining this community. As he put it:

Getting to know people in Geneva, it's something that is made much easier by gatherings of people. Of course receptions are nice and everything, but normally it's the seminars and discussions that civil society prepares, that's where you start knowing people and learning. I can say that I'm well-known here, because I've been here a long time, and it's like, you're part of the community here. And that's valuable in the sense that it helps you in your work.

A number of other interviewees invoked a 'trade community', but drew more flexible boundaries around it. One Geneva-based interviewee referred to a trade community which consists of a core of both more junior and more senior diplomats, surrounded by a layer of NGO representatives, who are sometimes but not always part of the community, depending on the issue area. Other interviewees in both NGOs and the WTO referred to slightly different configurations of the 'trade community', using terms like the 'Geneva community' or the 'WTO community', the 'Geneva NGO community', the 'international trade community' and 'the NGO community'. Irrespective of the exact boundaries and terms used to denote the 'trade community', what is striking is the emphasis placed by interviewees on the notion of 'community', and the ways in which NGOs are both invited to be part of and involved in the construction of such a community.

Official WTO discourse on the subject of 'civil society' reinforces this notion of a trade community that responsible members of civil society are invited to join and help sustain. As mentioned in Chapter Four, Pascal Lamy, in his inaugural speeches at the annual WTO Public Forums, regularly evokes civil society as a pool of knowledgeable, responsible global subjects, ready to share their opinions and expertise and thus contribute to the

activities of the trade community. In his opening speech at the 2007 Public Forum, for example, he began by inviting participants to contribute to WTO decision-making:

It is my pleasure to welcome you to the WTO's 7<sup>th</sup> Annual Public Forum, this time on "*How the WTO Can Help Harness Globalization?*" This year's title, ladies and gentlemen, is a question that the WTO puts to you, to get your thoughts and your views. If we are opening our doors to the public today it is because WTO Members wish to tap into a wider pool of ideas – into fresh ideas – on how the WTO can best contribute to shaping the forces of globalisation.<sup>65</sup>

He further emphasised the contribution that civil society can make and has already made to trade negotiations throughout the speech. '*Let me be clear*', he declared a few minutes into the speech, '*the WTO is looking for your contribution, it needs you to help shape its agenda*' (italics in original text), before outlining a number of cases (relating to intellectual property rights and access to medicines, negotiations on fisheries subsidies, links between trade and the environment and food aid) where civil society has made a positive contribution to the WTO's activities. He concluded the speech by stating that 'I look forward to your views and your active engagement in these two days', thus reinforcing the message that members of civil society can play their part in the activities that take place in the WTO. His speech in 2010, similarly, evoked a civil society populated by knowledgeable, participating subjects, whose views and expertise can contribute positively to the business of the WTO:

Ladies and gentlemen, this is your Forum. And on behalf of all WTO Members and myself, let me say that we look forward to learning from you, and interacting with you. We hope that the Forum will enable our Members to take the Multilateral Trading System forward based on the ideas that it generates.<sup>66</sup>

The WTO website uses similar language and imagery to evoke a trade community which members of the public are invited to be part of. The welcome page, for example, of the on-line forum, reiterates the message that the WTO encourages members of the public to contribute their opinions and views to ongoing discussions and thus shape the debates taking place at the WTO:

Welcome to the WTO's on-line forum and chat area. We will be having regular discussions in which we encourage you to enter and give your views. The topics will cover WTO issues and will either be chosen by ourselves or suggested by you the WTO audience. For each WTO-initiated discussion, we

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<sup>65</sup> See 'Opening Remarks by Pascal Lamy, WTO Director-General' in *2007 WTO Public Forum: "How Can the WTO Help Harness Globalization"*, 323-327 for the full text of the speech.

<sup>66</sup> See 'Public Forum 2010: The Forces Shaping World Trade: Opening Speech Pascal Lamy', leaflet distributed at 2010 Public Forum, for the full text.

will have panellists from within the WTO and experts from outside invited to participate as well.<sup>67</sup>

Before entering the on-line forum, would-be participants are requested to read and comply with a series of 'rules for participation', which include the instruction to not 'post messages, material or links which are defamatory, obscene, abusive or threatening'.<sup>68</sup> The message is clear: as a member of the public, you are welcome to become part of a virtual trade community engaged in debate about the multilateral trading system, provided you behave responsibly. 'The responsible member of the trade community' is thus incited and called upon in multiple spaces of interaction between civil society and the WTO, including Geneva-based face-to-face interactions and more open communicative spaces like the on-line forum.

## Flexibilities and Struggles over Meaning

In the previous section, I identified and examined a number of acceptable subject positions which are preferred and called forward in the various spaces of interaction and communication which have opened up between representatives of civil society and of the WTO. I identified six interconnected subject positions – 'the aide', 'the technical expert', 'the anonymous contributor', 'the pragmatist', 'the non-challenging interlocutor', and 'the responsible member of the trade community' – which in combination demarcate the boundaries of acceptable subjectivity in field of civil society-WTO interactions. I now turn my attention to the flexibilities within and between these preferred forms of subjectivity, and to the counter-conducts and struggles over meaning that challenge and either pose a threat to, or are absorbed into, them. I consider three sets of issues: (1) the flexibilities inherent in the matrix of acceptable subjectivity that arise from the existence of multiple permissible subject positions; (2) attempts to subvert the subject positions identified, particularly 'the technical expert' and 'the pragmatist', through the use of emotion and emotional interventions; and (3) attempts to challenge or bypass the logic of trade liberalisation underpinning both 'the pragmatist' and 'the non-challenging interlocutor'.

The existence of multiple permissible subject positions appears, firstly, to function as an intrinsic source of flexibility for would-be participants in the field of civil society-WTO interactions. Individuals who wish to engage in dialogue and interaction effectively have a choice of acceptable roles and subject positions that they can enact, and can to some

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<sup>67</sup> WTO (no date), 'Community: Forum', [http://www.wto.org/english/forums\\_e/chat\\_e/chat\\_e.htm](http://www.wto.org/english/forums_e/chat_e/chat_e.htm)

<sup>68</sup> WTO (no date), 'Rules for Participation in WTO On-Line Forums', [http://www.wto.org/english/forums\\_e/chat\\_e/guide\\_e.htm](http://www.wto.org/english/forums_e/chat_e/guide_e.htm)

extent select which role to play. As mentioned in the discussion of 'the anonymous contributor', some Geneva-based NGO staff 'put on different hats' when interacting with national delegates and members of the WTO Secretariat, performing the role of 'technical expert', for instance, when participating in meetings and seminars in Geneva, but putting on their 'advocacy hats' in other contexts. Individuals thus seem aware of the expectations of representatives of the WTO, and choose to emphasise particular behaviours and attitudes as deemed necessary in the pursuit of their organisation's overall goals. The complexity of the decision-making processes in the WTO and the sheer number of delegates and diplomats involved also gives representatives of 'global civil society' a degree of choice about who to approach and interact with. Participants in the field of civil society-WTO interactions can thus to some extent choose to intervene at points in this field where adopting one of the acceptable subject positions does not conflict with their own sense of identity and purpose. One Geneva-based NGO programme director revealed, for example, that he works mainly with delegates from the LDC (Least Developed Countries) Group and the African Group in the WTO, countries that 'don't have extensive indigenous issues', so there is no real conflict between providing 'technical assistance' to these delegates and advocacy work on indigenous rights carried out elsewhere by the organisation. 'The relationship works because we share the same goals', he said. With delegates and countries who are not 'like-minded', the type of work attempted is rather different, and incorporates more advocacy. This means occupying a less favoured subject position and potentially failing to be accepted as a legitimate interlocutor in that context, but allows the individual and organisation to maintain a coherent sense of identity and purpose whilst pursuing their objectives in this field of interaction.

Although a source of flexibility and means to pursue objectives without compromising existing ideas about identity and purpose, this practice of adopting different subject positions in different contexts does not challenge perceptions of what constitutes acceptable subjectivity in this field of social activity, and might thus be seen as merely reproducing and reinforcing the preference for the subject positions outlined. Other practices in the field of civil society-WTO interactions do, however, challenge the logics and assumptions in the field, and thus pose more of a threat to the processes governing civil society-WTO relations. Emotion and emotional reactions, for example, seem to be used to disrupt the categories and logics implicit in substantive debates about the WTO as well as ideas about what constitutes appropriate subjectivity in the field of civil society-WTO interactions. At one of the WTO Public Forums, for example, I participated in a panel session where one of the presenters adopted an unusually (in the context of the WTO Public Forums and formally organised interactions between civil society and the WTO) passionate, embodied style of expression, both during her formal presentation and in the subsequent group discussion. The topic of the panel was the



link between patents and public health, and an assessment of how an exemption to the general provisions of TRIPS agreed by the WTO General Council in 2003 had been working since it came into force. The presenter was the only member of the panel who used emotional terms and emotional forms of expression, and stood out from the other presenters who framed their interventions in more technical language and used a more neutral, impassive delivery style. Her impassioned, animated delivery and use of emotional language can be read as attempts to disrupt and challenge the overwhelmingly technical terms in which debates had been framed and the neutral, docile forms of subjectivity enacted by the other panel participants. Her emotional intervention, interestingly, was met by disapproval by the other presenters: 'it's all very well to make an impassioned speech about ... ', said one of her fellow panellists, seemingly quite irritated that her arguments had been articulated in such embodied, emotional terms, 'but we need to address everything'. In response, the emotional presenter defended her passionate style of expression: 'for me, it was understood that we're also talking about ... , but why ratify something that doesn't work? I have no shame in being passionate about what's going on. I have passion because it's about people'. Despite this defence, the preferred forms of subjectivity prevailed: her attack on the disembodied forms of reason and tendency to frame the issues as technical problems in the panel was swiftly closed down by the other participants. Her emotional interventions were given little space or serious consideration, and the model of more emotional, embodied subjectivity she represented was dismissed as passionate and therefore unreasonable.

Another set of practices and perspectives that can be read as counter-conducts in the field of acceptable subjectivity centre around a refusal to work within the logic of trade liberalisation assumed by subject positions such as 'the pragmatist' and 'the non-challenging interlocutor'. In the case of debates about TRIPS, traditional knowledge and biodiversity, it is primarily indigenous associations whose perspectives and interventions explicitly challenge the trade liberalisation paradigm, although other organisations also challenge the primacy of free trade economics in more subtle ways. Indigenous associations in the Peruvian Andes frequently frame, for example, their understanding of trade, intellectual property, traditional knowledge and biodiversity in terms of their 'cosmovisión andina' (Andean cosmovision), which emphasises collective ownership of knowledge and the collective responsibilities of communities towards the natural world, and rejects the notion that the natural world can be divided up, owned and traded by individuals or private companies. This cosmovision rejects many of the assumptions underpinning liberal economics and thus poses a considerable challenge to the permissible subject positions identified above. Tellingly, however, not one official I interviewed in the Peruvian government or in the WTO even alluded to an Andean cosmovision or any of the key elements within it. As discussed in more detail in Chapter

Seven, this 'Andean subjectivity' has not been successfully asserted or recognised as legitimate in the communicative spaces that have opened up between representatives of 'global civil society' and the WTO. Nevertheless, this tension between Andean subjectivity and liberal economic principles represents a noteworthy site of friction in the field of civil society-WTO interactions.

## Conclusion

This chapter has focused on the way that subjectivity is implicated both as a terrain of governmental activity and as a site of contestation in the field of civil society-WTO interactions. After outlining three of the main channels through which subjectification takes place in this social field, I focused on the forms of global subjectivity that have emerged as acceptable and desirable. Six legitimate subject positions were identified: 'the aide', 'the technical expert', 'the anonymous contributor', 'the pragmatist', 'the non-challenging interlocutor', and 'the responsible member of the trade community'. I then considered the flexibilities inherent within the matrix of acceptable subjectivity and the struggles to disrupt and challenge the logics and assumptions of the field. Although an important site of contestation, these struggles to disrupt ideas about acceptable subjectivity do not seem, for the time being at least, to have had much success: attempts to use emotion to challenge dominant logics and categories and the refusal to work within the framework of trade liberalisation have either been closed down and dismissed by trade officials and WTO representatives, or have found little resonance or consideration in broader debates. Nevertheless, the use of emotion and the refusal to accept the logic of trade liberalisation represent important points of friction in the field of civil society-WTO interactions, and may constitute potential sites and sources of change in the future.

## Chapter Seven

# TRIPS, Traditional Knowledge and Biodiversity: Rarefied Discourse in Global Civil Society

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In the previous three chapters, I analysed three interconnected dimensions of the social field in which interaction takes place between representatives of civil society and the WTO: the dominant discourses about 'global civil society' within the WTO and the forms of visibility and invisibility that emerge from these (Chapter Four); the technologies of government that extend across the field of civil society-WTO interactions and work to keep behaviour and interventions within acceptable, non-challenging limits (Chapter Five); and the processes of subjectification and preferred forms of subjectivity in the field (Chapter Six). In this chapter, I draw out some of the implications of these interconnected and mutually sustaining discourses, technologies of government, and preferred forms of subjectivity. I return to the debates about TRIPS, traditional knowledge and biodiversity, and examine how these different elements combine to structure the field of possible action of would-be participants in these debates. I argue that these discourses, governmental technologies and preferred subjectivities generate processes of what Foucault termed 'rarefaction' (1981: 56-67) in the field of civil society-WTO interactions, which place limitations on the kinds of intervention and the kinds of speaking subject that are deemed authoritative and legitimate.

The concept of 'rarefaction',<sup>69</sup> although not one of the elements of Foucault's work on discourse and discursive practices which has been most exploited within Foucauldian studies of global governance, provides, I suggest, a useful tool with which to conceptualise and examine the effects of the discourses, technologies of government and preferred forms of subjectivity already discussed. The term is intended to convey a sense of narrowing, thinning out or making less dense of discourse and those who are qualified to speak it. As Robert Young has put it:

The French term 'rarefaction' includes not only the meaning of the rarefaction of gases, but also the sense of depletion (of supplies), of growing scarcity, of dwindling, dying out and exhaustion. The effect of an analysis of forms of discourse is to reveal not a plenitude of meaning, but a scarcity.

(1981: 49)

Foucault did not elaborate in great detail on the precise mechanisms and processes through which this scarcity of meaning is produced, but he did identify a number of 'procedures for controlling and delimiting discourse' (1981: 56), including what he terms 'commentary' and 'the author', and a 'a third group of procedures' that impose rules on the individuals who attempt to produce and access discourse, and lead to what he calls 'rarefaction of the speaking subjects' (*ibid.*: 61). Rarefaction thus not only works to generate a scarcity of meaning within discourses by limiting what kind of statements and what kind of meaning can legitimately be expressed, but also generates a scarcity of legitimate speaking subjects. As Foucault explained:

none shall enter the order of discourse if he [sic] does not satisfy certain requirements or if he [sic] is not, from the outset, qualified to do so. To be more precise: not all the regions of discourse are equally open and penetrable; some of them are largely forbidden (they are differentiated and differentiating), while others seem to be almost open to all winds and put at the disposal of every speaking subject, without prior restrictions.

(1981: 61-62)

In the following sections, I identify a number of systems of restriction and control in the field of civil society-WTO interactions, which emerge through the interplay of the discourses, governmental technologies and preferred subjectivities discussed in the previous three chapters. I identify three types or levels of rarefaction: the rarefaction of the subject matter of debates on TRIPS, traditional knowledge and biodiversity in the field of civil society-WTO interactions; the rarefaction of legitimate perspectives and forms of knowledge; and the rarefaction of the knowing, speaking subject in this field. I then consider what interests and perspectives are amplified through these processes of

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<sup>69</sup> It is sometimes, but less frequently, translated into English as rarification (e.g. Foucault 2003 [1972]: 134)

rarefaction, and reflect on the kind of 'global civil society' that is being called forward as a result.

## Rarefaction of Subject Matter

The first type of rarefaction is a narrowing or scarcity of the subject matter of debates on TRIPS, traditional knowledge and biodiversity. As discussed in Chapter Three, debates in the WTO's TRIPS Council on traditional knowledge and biodiversity have come to focus increasingly narrowly on proposals to modify the TRIPS Agreement so as to require disclosure of origin of traditional knowledge in patent applications, as well as proof of prior informed consent and benefit-sharing arrangements. Some countries have made submissions to the TRIPS Council which conceptualise the issues differently. The Africa Group, for example, made a submission in 2003 which proceeded from the position that '[p]atents on life forms are unethical' and 'contrary to the moral and cultural norms of many societies in Members of the WTO';<sup>70</sup> Bolivia, similarly, has argued that the 'patenting of life forms is unethical as it is against the moral and cultural norms of many societies and indigenous peoples', and vowed to 'prevent the patenting of any form of life and the granting of private monopolistic intellectual property rights on any traditional-ancestral knowledge'.<sup>71</sup> Nevertheless, the vast majority of submissions to the TRIPS Council have either advocated protecting traditional knowledge and biodiversity by regulating patent applications, or have questioned and/or rejected the need for additional protection altogether. This focus on disclosure of origin, prior informed consent and benefit-sharing in the TRIPS Council, along with the implicit acceptance of the patent system that underpins it, gives particular meaning and content to the discourses discussed in Chapter Four and the preferred forms of subjectivity discussed in Chapter Six.

As discussed in Chapter Four, four competing discourses permeate the ways in which Secretariat staff and national delegates enact and conceptualise their dealings with representatives of (global) civil society: the discourses of 'civil society can contribute', 'civil society must be informed', 'civil society is confusing' and 'civil society is not that relevant'. These discourses construct civil society as either a contributor of technical expertise, a recipient of information, a source of confusion or irrelevant to WTO activities. The only space the intersection of these discourses leaves open for civil society to be actively involved in debates is thus as a contributor of technical expertise. More passive involvement is sanctioned by the 'civil society must be informed'

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<sup>70</sup> Africa Group, 26 June 2003 communication to the TRIPS Council (WTO document IP/C/W/404)

<sup>71</sup> Bolivia, 26 February 2010 communication to the TRIPS Council (WTO document IP/C/W/545)

discourse, but civil society organisations are otherwise constructed as confusing or irrelevant, and therefore unhelpful or unnecessary participants in dialogue and debate. In a context where TRIPS Council discussions have come to focus increasingly narrowly on disclosure of origin, prior informed consent and benefit-sharing as posited solutions to the misappropriation of traditional knowledge and biodiversity, and most delegates concerned about the 'misappropriation' of traditional knowledge and biodiversity implicitly accept the patent system as an appropriate mechanism for protection, this active involvement entails engaging in relatively technical, legalistic debates which take the patent system as a point of departure. The preferred forms of subjectivity discussed in Chapter Six reinforce this narrowing of the debate to issues surrounding disclosure of origin, prior informed consent and benefit-sharing. Representatives of civil society who wish to engage in active dialogue are expected to enact subject positions such as the 'the aide', 'the technical expert', 'the anonymous contributor', 'the pragmatist', 'the non-challenging interlocutor', and 'the responsible member of the trade community', all of which require an acceptance of trade officials' and trade delegates' perceptions of what constitute relevant issues and problems, and a willingness and ability to apply technical knowledge and expertise to recognised negotiating issues. Like the discourses which permeate Secretariat officials' and delegates' understandings of the role 'global civil society' can play in trade negotiations, these legitimate forms of subjectivity thus reward would-be participants in dialogue with the WTO who work and, crucially, can provide support for negotiations within the relatively narrow terms of reference that TRIPS Council discussions have increasingly taken.<sup>72</sup>

Thus interactions between representatives of civil society and the WTO on the subject of TRIPS, traditional knowledge and biodiversity have often focused on sharing evidence and technical expertise which supports the specific discussions taking place in the TRIPS Council. Interviewees working in Geneva-based organisations who regularly interact with national delegates and Secretariat staff reported providing support for the development of the disclosure of origin proposal which has come to dominate discussions in the TRIPS Council in the form of analysis and research. A programme director in one Geneva-based NGO told me, for example, that:

What we've tried to do is to contribute to the analytical work and the policy work behind the proposal, particularly the disclosure proposal. So on the disclosure proposal, we don't say that this is the solution, but we try to show how it can be implemented, how patent laws can be amended to incorporate such a disclosure requirement, what the situation is from a legal point of view.

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<sup>72</sup> Examining the processes through which debates in the TRIPS Council have become increasingly narrow and rarefied in terms of relevant subject matter and perspectives would, were sufficient empirical material available, no doubt also prove to be enlightening.

An interviewee in another Geneva-based NGO talked about providing 'technical assistance and advice about making decisions' to negotiating groups to enable them to develop their positions and proposals on the so-called TRIPS-CBD issues in the TRIPS Council. Interventions in the field of civil society-WTO interactions have also focused on how developments in the WTO relate to work being carried out in other international organisations on the protection of traditional knowledge and biodiversity. Indeed, this would seem to be one of the main ways that organisations have found to raise concerns about TRIPS, through highlighting differences in focus and tensions between the work in the WTO and in other international organisations. At the 2010 Public Forum, for example, a panel was organised on 'The (Elusive?) Quest for Coherence in Global Negotiations and Norms: The Case of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the Convention on Biological Diversity (CBD)'.<sup>73</sup> At the Public Symposium held in 2005, a panel was held on 'Disclosure Requirements: Incorporating the CBD Principles in the TRIPS Agreement On the Road to Hong Kong',<sup>74</sup> a focus which mirrored efforts in the TRIPS Council to use commitments under the CBD as a lever to prompt discussion on traditional knowledge and biodiversity.

Removed from discussion, however, are topics such as whether patents on any form of life are ethical, and the related question of whether Article 27.3(b) of the TRIPS Agreement should oblige WTO member states to provide intellectual property protection to forms of life such as plant varieties. As one interviewee in a Geneva-based NGO put it, 'the whole issue of whether you can patent life has fallen out of the debate. Events have overtaken the TRIPS-CBD dimension of discussions, in many ways we would like to get this out of the way, and get back to the patents-on-life issue'. Another interviewee in one of the NGOs that has been most involved in generating awareness of issues around biopiracy and misappropriation of traditional knowledge made a similar point, telling me that 'we're talking to some of our NGO friends about the need to actually revive the campaign on no patents on life'. Also erased are debates about whether patents are an appropriate mechanism to protect traditional knowledge and biodiversity, and the risks associated with drawing these elements into a global intellectual property regime based around a model of private property and private ownership of ideas. An EU official I interviewed, for example, was very clear that civil society reports and proposals need to work with the existing patent system if they are to be useful and taken seriously by negotiators: 'revamping the IP system, eliminating

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<sup>73</sup> Session 38 of the 2010 Public Forum. The Public Forum programme is available here:

[http://www.wto.org/english/forums\\_e/public\\_forum10\\_e/programme\\_e.htm](http://www.wto.org/english/forums_e/public_forum10_e/programme_e.htm)

<sup>74</sup> Session 17 of the 2005 Public Symposium (these events became known as Public Forums from 2006).

The programme is available here:

[http://www.wto.org/english/news\\_e/events\\_e/symp05\\_e/symp\\_devagenda\\_prog\\_05\\_e.htm](http://www.wto.org/english/news_e/events_e/symp05_e/symp_devagenda_prog_05_e.htm)

patents, these are positions that are not politically viable. We can't propose things that are not politically realistic'.

Also notable for their absence are strands of thinking and argument that invoke themes such as spirituality, alternative epistemologies, culture and identity, despite their importance to the communities whose so-called traditional knowledge is the subject of discussion. It was only after travelling to Peru and interviewing representatives of peasants' and indigenous associations, for example, that I became aware of debates and concerns about TRIPS that are rooted in alternative epistemologies and identities, despite having followed TRIPS Council discussions for several years and having already carried out thirty in-depth interviews with NGO representatives, national delegates and Secretariat staff who regularly interact in Geneva. The director of a peasants' association based on Lima, for example, was surprised that nobody in Geneva had mentioned Andean identity and epistemology when discussing concerns about TRIPS and traditional knowledge with me. As he put it:

¿Tú no has escuchado hablar de cosmovisión andina? Es muy práctico, es lo que nosotros encontramos empezando nomás, porque estuvimos estudiando las prácticas. Es que si tú no entiendes la cosmovisión, no entiendes nada. Así nomás.

You've never heard anyone talk about Andean cosmovision? It's very practical, that's what we found when we started, because we were studying practices. If you don't understand the cosmovision, you don't understand anything. That's how it is.

Another interviewee in a Geneva-based NGO told me that despite working on indigenous rights in other arenas, his organisation 'does not address the rights of indigenous peoples in the WTO context' because there's a 'lack of purchase' for these concerns in this context. Questions of culture, identity and indigenous rights, despite their centrality to communities whose practices and knowledge are perceived to require protection, are thus also rarefied out of Geneva-based dialogue and debates.

## Rarefaction of Legitimate Perspectives

The second type of rarefaction is closely connected to this narrowing of the subject matter of debates on TRIPS, traditional knowledge and biodiversity, and consists of a narrowing or scarcity of the theoretical perspectives and worldviews from which these issues can be approached. The narrowing of the subject matter to technical, legalistic debates around disclosure of origin, prior informed consent and benefit-sharing already places limits on the perspectives and worldviews that are considered relevant, through



privileging legalistic frameworks and conceptualisations of the issues. As an interviewee in a Geneva-based NGO that does not engage in debates about TRIPS, traditional knowledge and biodiversity told me, 'strong legal expertise is necessary in this area. We can read and understand the TRIPS text in a general sense, but that text is a tough one to understand, and we can't bring any added value to this work'. Lack of relevant legal expertise, combined with a sense that other organisations are better placed to engage in the details of debates as they have come to be framed, thus leads individuals and organisations that do not consider themselves experts in intellectual property law to withdraw from dialogue. This in turn means, of course, that the narrow, patent system-focused framing of WTO debates on TRIPS, traditional knowledge and biodiversity remains unchallenged. This privileging of technical, legalistic perspectives overlaps and intersects with the processes of subjectification and preferred forms of subjectivity discussed in Chapter Six, which encourage and reward the adoption of trade-friendly vocabularies and frameworks. The types of perspectives that are welcomed, then, in discussions relating to intellectual property, traditional knowledge and biodiversity are those that are rooted in legalistic understandings of the issues, and accept trade liberalisation as the overarching framework of discussions. As one of the national delegates I interviewed put it, 'we should never forget what the WTO is there for: promoting free trade. Neither the delegates nor the NGOs should forget that'.

As with the rarefaction of subject matter, this narrowing of legitimate perspectives excludes many of the strands of thinking and discussion about intellectual property and the protection of traditional knowledge and biodiversity that have been articulated within Peruvian civil society. According to a Peruvian journalist and consultant I interviewed who works on issues relating to biodiversity and indigenous rights:

Y tú me preguntas, en el Perú, ¿los debates sobre derechos de propiedad intelectual que se generan a nivel de las comunidades y de la sociedad civil incorporan el tema de la cosmovisión? Sí. Y lo incorporan fuertemente. ¿De qué manera la sociedad civil que representa a toda esta movilidad social lo traslada? No, no existen esos canales. Tú hablas de algo bien interesante cuando dices, haces una nota aquí, de que la Organización Mundial de Comercio, como que tiene una preferencia por escuchar la opinión de ONGs que se dedican más profesionalmente al tema de biodiversidad y propiedad intelectual. De hecho es así. Es mucho más fácil hablar en esos niveles técnicos. Pero esos niveles técnicos no están expresando la problemática por ejemplo de los pueblos indígenas andinos y amazónicos.

And you ask me if, in Peru, the debates about intellectual property rights that are taking place within communities and civil society include the topic of cosmovision. Yes they do. And it's a very important part of these debates. How does the civil society that represents all this movement transmit this topic? It doesn't, there aren't any channels that transmit it. You talk about

something very interesting when you say, there's a note here, that in the World Trade Organisation, there's a preference for listening to the opinion of NGOs which dedicate themselves more professionally to the topic of biodiversity and intellectual property. In fact that's how it is. It's much easier to talk at these technical levels. But these technical levels are not expressing the problems faced by Andean and Amazonian indigenous peoples.

What is interesting here is the role attributed to what we might call 'global civil society' in maintaining the narrowness of perspectives that are permitted in debates about TRIPS. Interventions rooted in alternative epistemologies such as Andean cosmovision are not only not heard or recognised as legitimate by trade officials and delegates to the WTO, but are also not recognised, translated and channelled by the mainly international NGOs that interact with representatives of the WTO on a regular basis.

Another interviewee in Peru, the director of a peasants' association, talked about the lack of appreciation and awareness within the WTO of non-market based approaches to the natural world and knowledge relating to it. As he put it:

Entonces eso, cuando la Organización Mundial de Comercio hace sus dispositivos, sus arreglos, nunca está viendo esta vida, está viendo la otra nomás, inclusión al mercado. Y la andina no es la única ¿no? Porque hay agriculturas tan antiguas como esta en Centroamérica, en África, en Asia, en la India, en la China, Medio Oriente, son centros de agricultura y cultura original, que bueno, seguramente por allá deben estar también conservándose algo ... Uno sale al campo nomás, y si quieres ver, lo ves. Un técnico del Ministerio de Agricultura sale y no ve estas cosas.

So when the World Trade Organisation is creating its mechanisms, its agreements, it's never looking at this type of life, it's just looking at the other type, insertion into the market. And Andean life is not the only one [that's overlooked]. Because there are forms of agriculture as old as this one in Central America, in Africa, in Asia, in India, in China, in the Middle East, they are centres of original agriculture and culture, and I'm sure they must be trying to conserve parts of this there as well ... You only have to go out into the countryside and if you want to see it, you see it. A technician from the Ministry of Agriculture goes out and doesn't see these things.

Perspectives which seek to protect and conserve traditional knowledge and practices without seeking to commodify them and absorb them into a capitalist system of accumulation are also, it seems, not recognised or even understood by those who work in the WTO, or indeed by other representatives of the Peruvian state. According to the same interviewee, 'sería bonito ponerle un manifiesto, la suprema ignorancia de los decidores políticos a todo nivel sobre esta cuestión de cosmovisión, nada más. Para ver cuántos de ellos que dan leyes para la vida de otros saben algo' (it would be wonderful

to present a manifesto to them, about the complete ignorance of political decision-makers about this matter of cosmovision, just that. To see how many of those who make laws about other people's lives know anything about it). These non-market approaches to knowledge and nature, as well as the cultural practices they are rooted in, are thus removed from view and consideration, and not treated as relevant parts of the debate over TRIPS, traditional knowledge and biodiversity.

## Rarefaction of the Knowing, Speaking Subject

The narrowing of the subject matter and of the perspectives that are recognised as legitimate feed into a third form of rarefaction, which generates a scarcity of subjects who are considered qualified to know and speak with authority about intellectual property and the protection of traditional knowledge and biodiversity. This form of rarefaction works through a number of interconnected channels. The combination of discourses, governmental technologies and preferred subjectivities already discussed work, firstly, to render certain types of knowing, speaking subject more visible and legitimate than others in the field of civil society-WTO interactions. Those with legal training and the ability and willingness to operate within legalistic frameworks and conceptualisations of the issues are, at both the national and transnational levels at which debates have taken place, assumed to have most authority and legitimacy as representatives of (global) civil society, whilst others are invisibilised and sidelined. The Geneva focus of the WTO Secretariat's attempts to generate spaces of interaction between civil society and the WTO also plays a role here, and, as discussed in more general terms in Chapter Four, feeds into the regime of visibility and invisibility associated with this field. Rarefaction also works through decisions made by individuals about whether to participate in the field of civil society-WTO interactions based, for example, on their willingness and ability to adopt the necessary subject positions and preferred vocabularies and frameworks. Not all those who wish to participate in international debates about the protection of traditional knowledge are comfortable with the preferred forms of subjectivity and other rituals associated with the field, and thus choose not to pursue and/or maintain their involvement in WTO-focused debates.

This rarefaction of legitimate speaking subjects is perhaps easiest to observe in Peru, where the preferential treatment and status of individuals and organisations that approach the issues through legal lenses is most striking and obvious. Virtually every government official I talked to, when asked about the topic of traditional knowledge and intellectual property and about debates that have taken place on these issues in Peru, referred me to one particular Peruvian NGO, an organisation described by the director

of another Peruvian civil society association as ‘una plataforma muy muy capaz, pero muy técnica y abogados. No son los ciudadanos de a pie’ (a very very capable group, but very technical, they’re lawyers. They are not the average person in the street). Although some officials named other organisations or individuals who worked on issues relating to traditional knowledge, intellectual property and trade policy when encouraged or asked directly, this one NGO was always identified as the main, if not the only, organisation whose staff could tell me something about the protection of traditional knowledge in Peru. Other organisations, despite their scientific or agronomic expertise, or their more direct links to indigenous communities and their perspectives and concerns, were generally less visible to state officials, and thus not invited to meetings with government representatives or civil society dialogues and information sessions. According to the director of one of these more scientific NGOs:

Yo diría que hay un proceso de selección un poco debajo de la mesa, como decimos en el Perú, por el cual ya existen algunas personas o instituciones que son las que normalmente van a recibir las consultorías que haya o van a ser pues los eternos representantes del pensamiento nacional. Y eso no me parece justo.

I would say there’s a process of selection that happens a bit underneath the table as we say in Peru, in which there are already some people or institutions which are those that normally participate in consultancy processes or will always be seen to be the perpetual representatives of national thinking. And this doesn’t seem fair to me.

The Peruvian consultant and journalist mentioned earlier also commented on the lack of recognition and possibilities for participation of indigenous communities and movements in state-civil society debates about intellectual property and traditional knowledge:

Cuando se debatió el tema de biodiversidad y propiedad intelectual de los pueblos indígenas en el marco del tratado de libre comercio, no fueron los pueblos indígenas los que participaron. Fue la sociedad civil o las ONGs que tenían una vocación por el tema. Al final los pueblos indígenas han cuestionado el tratado de libre comercio, pero la sociedad civil que maneja el tema defiende esa posición. Entonces encuentras que entre el movimiento social o los movimientos indígenas y esa sociedad civil hay una confrontación, que tú la puedes ver no solamente en el tema de biodiversidad y propiedad intelectual, sino que también la puedes ver en los debates recientes sobre el tema de levantamiento de los indígenas en el norte, sobre la necesidad de derogar determinadas leyes. Entonces la sociedad civil o las ONGs que manejan el tema lo manejan de una manera excluyente, y no permiten una participación directa de los pueblos indígenas.

When the topic of biodiversity and indigenous peoples' intellectual property was discussed in the context of the free trade agreement,<sup>75</sup> it wasn't the indigenous peoples who participated. It was civil society or NGOs who focus professionally on the topic. In the end the indigenous peoples questioned the free trade agreement, but the civil society that works on the topic supports it. So you find that between the social movement or the indigenous movements and this civil society there's a confrontation, that you can see not only with the topic of biodiversity and intellectual property but also in the recent debates about the indigenous mobilisation in the north,<sup>76</sup> about the need to revoke particular laws, and so on. So the civil society or NGOs who work on the topic work on it in an exclusive way, and they don't allow indigenous peoples to participate directly.

The Peruvian civil society that speaks with authority about intellectual property, traditional knowledge and biodiversity does not include, it seems, indigenous communities and their associations,<sup>77</sup> nor does it include associations that conceptualise and approach the issues from non-legalistic perspectives.

This rarefaction of the speaking, knowing subject in Peruvian debates is mirrored in the spaces of interaction in which dialogue takes place in Geneva. Rarefaction of the speaking subject here is linked not only to the combination of discourses, governmental technologies and preferred forms of subjectivity in the field of civil society-WTO interactions already discussed which render certain speaking subjects more visible and legitimate than others, but also to the costs and compromises associated with maintaining a presence in Geneva. The only Peruvian civil society organisation, for example, that has participated regularly in dialogue with representatives of the WTO is, tellingly, the same legally-oriented Peruvian NGO discussed above. As one of this NGO's legal experts told me, when asked whether other Peruvian organisations have been present in Geneva-based debates:

Yo creo que somos en todo caso una de las pocas. Si me preguntas qué otra organización participa o ha participado en estos foros... En la OMC, la verdad es que, no sé cual otra, te estoy franco. En OMPI, en CBD, sí, he visto otras organizaciones, representantes indígenas incluso. Y han tenido una

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<sup>75</sup> The Peru-US Free Trade Agreement, signed in 2006. The text of the agreement is available here: <http://www.ustr.gov/trade-agreements/free-trade-agreements/peru-tpa/final-text>. The topic of traditional knowledge and biodiversity appears in Annex III of the agreement, rather than in the main text.

<sup>76</sup> The indigenous uprising in Bagua from April to June 2009 involving Amazonian indigenous groups seeking the repeal of a series of decrees that permit the sale of indigenous territories to private companies.

<sup>77</sup> Brendan Tobin and Krystyna Swiderska raise similar concerns about the lack of indigenous participation and support for government positions in their analysis of the processes through which a working group attached to INDECOPI, the Peruvian Institute for Competition Policy and Intellectual Property Protection developed a sui generis Regime to Protect the Collective Knowledge of Indigenous Peoples in 1999, as required by the Convention on Biological Diversity (2001).

participación más activa. Pero en la OMC, creo que tenemos la suerte de ser una de las muy pocas que ha tenido la posibilidad de intervenir. Y bueno, hemos podido canalizar nuestras ideas por las instancias más o menos oficiales.

I think we're probably one of the few. If you ask me what other organisation participates or has participated in these forums... In the WTO, the truth is, I don't know of any other, to be frank. In WIPO, in the CBD, yes, I've seen other organisations, even indigenous representatives. And they've participated in a more active way. But in the WTO, I think we're lucky enough to be one of the very few [organisations] that has been able to intervene in debates. And we've been able to feed our ideas into more or less official channels.

Another interviewee, the director of a peasants' association who previously spent time in Geneva participating in both WIPO meetings and seminars and workshops organised by the Geneva-based NGOs but has stopped attending, talked about his discomfort not only at using up resources which could be more usefully spent on other types of work, but also at adopting the forms of subjectivity demanded by these events. As he put it, 'ir a Ginebra cada vez, es difícil por la consciencia, te pones una noche en hotel, te cuesta 300 euros, sudas, no puedes dormir de vergüenza' (going to Geneva every time, it's difficult for the conscience, you pay for a night in a hotel, it costs you 300 Euros, you start sweating, you can't sleep you feel so ashamed). He also told me that, 'si uno está metido en Ginebra, uno pierde contacto con la realidad. Es muy virtual, ... es un mundo muy extraño. Y las cosas que se hablan pues, el lenguaje de las Naciones Unidas y las discusiones políticas, es una discusión muy virtualista' (if you're very involved in what happens in Geneva, you lose contact with reality. It's very virtual, ... it's a very strange world. And the things they talk about, the language of the United Nations and political discussion, such virtual discussions). He illustrated this sense of dislocation with a story about being invited to speak at a civil society-organised event about intellectual property and traditional knowledge:

Me invitaron hablar así, lo llamaban desayuno croissants, café croissants. Copioso, mucha comida, muchos embajadores, todos los delegados a la OMC, para que escuchen otras perspectivas. Yo decía, mira, para mí, el conocimiento tradicional, sobre todo en la OMC, se usa, los gobiernos lo usan como un *bargaining chip*. No es nada de los derechos de las comunidades. Es como sacan beneficios para los elites nacionales. Como es que dan el acceso a mercados para los ricos del país, no para las comunidades. Entonces a mí me parecía muy surrealista que tú puedes hablar con gente que está utilizando el conocimiento tradicional como solo una banderita de batalla, como una ventaja de negociación, para sacarle beneficios en favor de las clases que oprimen a los dueños del conocimiento tradicional.

They invited me to speak at what they called a croissant breakfast, coffee and croissants. Copious, lots of food, many ambassadors, all the delegates to the WTO, so they can listen to other perspectives. I said, look, for me, traditional knowledge, above all in the WTO, is being used, governments are using it as a bargaining chip. It has nothing to do with communities' rights. It's about getting benefits for national elites. How to get market access for the rich, not for the communities. So it was very surreal to be talking to people who are using traditional knowledge as a kind of battle flag, as a negotiating advantage, to get benefits for the classes that are oppressing the owners of traditional knowledge.

Because of the costs involved and the discomfort and annoyance provoked by the virtual, 'tecnocrático' (technocratic) terms of the Geneva debates, he and his organisation have decided not to continue attempting to participate directly in these spaces of interaction:

Yo creo que lo más importante es el trabajo en el campo. Yo lo veo así. Es importante pienso sí, es muy importante tener impacto internacional, y tenemos colaboradores, por ejemplo hay IIED en Inglaterra con quienes a veces hacemos algo, podríamos hacer un poco más de información a nivel internacional. Tenemos colaboradores en Estados Unidos, somos parte de redes. Pero tener por ejemplo una oficina o una presencia en Ginebra, no lo veo muy necesario. Imagínate, con los costos de tener una oficina allá, todo el trabajo que podemos hacer en el campo. Yo creo que las organizaciones que ya están en Ginebra, ellos son los que necesitan cambiar. Ellos necesitan dar más apertura.

I think the most important thing is the work in the countryside. That's the way I see it. It is important I think, it's very important to have an international impact, and have collaborators, for example there's IIED [International Institute for Environment and Development] in England we do things with occasionally, we could do a bit more about informing people at the international level. We have collaborators in the United States, we're part of networks. But to have an office or presence in Geneva, I don't think it's necessary. Imagine, with the costs of having an office there, all the work we could do in the countryside. I think the organisations that are already in Geneva, they're the ones that need to change. They need to be more open.

The narrowing of authoritative speaking subjects in Geneva-based debates does not only affect indigenous and peasants' associations from Peru, however, but has a more general impact on representatives of indigenous organisations as well as other less well-funded organisations. An interviewee in a Geneva-based NGO told me, for example, that none of the big indigenous civil society groups such as Via Campesina or the International Indigenous Forum on Biodiversity are involved at the WTO 'because there's no lever for them, they have no presence in Geneva'. Another Geneva-based

NGO researcher told me that ‘unless organisations have the funding to be here, they’re excluded from the process [of dialogue]’. The regime of visibility that has emerged in the field of civil society-WTO interactions, which, as discussed in Chapter Four, favours organisations that maintain a permanent or regular presence in Geneva and use technical, economically-oriented vocabularies, thus works to rarefy the speaking subjects in debates about traditional knowledge and biodiversity in such a way that the voices and perspectives of indigenous associations and other community organisations are removed and erased. As one of the delegates I interviewed put it, it’s the ‘Quakers, ICTSD, South Centre, CIEL, the usual suspects’ that are present and active in debates about traditional knowledge and biodiversity in this field, without, as the examples discussed reveal, necessarily representing any of the views or perspectives of communities whose knowledge and cultural practices are in need of greater protection.

## A ‘Global’ Civil Society?

In rarefying the subject matter, legitimate perspectives and knowing, speaking subjects in debates on intellectual property, traditional knowledge and biodiversity, the field of civil society-WTO interaction rewards individuals and organisations that can participate in dialogue at a legalistic, technical level, and that accept the patent system and the model of private ownership it embodies as an appropriate mechanism for protection. The Geneva focus of the spaces of interaction, and the importance of informal practices and personalised relationships, simultaneously rewards individuals and organisations that have established a permanent or regular presence in Geneva, and demonstrated their commitment and reliability through regular, non-challenging interaction with delegates and Secretariat staff. The ‘global civil society’ that is called forward and constructed as legitimate in the field of civil society-WTO interaction is thus one which is conversant in legalistic vocabularies and frameworks, does not challenge the model of private ownership and accumulation underpinning Western intellectual property regimes, and which has access to sufficient funding and a willingness to use it to maintain a presence in Geneva.

As the discussion of the different forms of rarefaction reveals, not all of those who wish to input into global debates about intellectual property and traditional knowledge are able or willing to adopt the forms of subjectivity and perspectives on knowledge and the natural world required to be part of this ‘global civil society’, or to expend the material resources required to maintain the required presence in Geneva. In rarefying the subject matter, legitimate perspectives and knowing, speaking subjects in debates on TRIPS, traditional knowledge and biodiversity, the field of civil society-WTO interactions



works to marginalise and exclude many of the voices and strands of thinking that are present in the networks and organisations conventionally understood to constitute 'global civil society' (see e.g. Keane 2003: 8-9; Scholte 2002b: 146-7). The field of civil society-WTO interactions thus serves to amplify the voices and perspectives of the predominantly (but not, it is important to note, exclusively) Northern, professionalised NGOs that do not challenge the patent system or the existence and underlying principles of the WTO, whilst marginalising indigenous and other critical voices and perspectives. The field thus amplifies broader discourses about the value of private property, the necessity of ongoing capitalist accumulation, individualist conceptions of knowledge and intellectual and creative endeavour, and the supremacy of liberal-rationalist worldviews at the expense of perspectives which are rooted in alternative epistemologies and conceptualisations of the social and natural world. As Janet Newman has noted:

Discourses are the product of ongoing work that seeks to hold them together in the face of other possible social and political imaginaries. What is important is the way some discourses are amplified through the political process, how they are coupled with others in new discursive articulations and how they become part of a new 'common sense' about the best way to govern.

(2005b: 211)

The 'common sense' that is promoted in and through the field of civil society-WTO interactions is thus one which is rooted in Western epistemologies and conceptions of the social and natural world. Other forms of common sense, including indigenous perspectives and frameworks, along with the individuals and organisations that work within them, have been rarefied out of this 'global civil society', despite their proximity and, one might assume, relevance to debates about traditional knowledge and biodiversity. As the director of one Peruvian indigenous association put it:

La globalidad sigue siendo para algunos y no para todos. Se aplica el derecho para algunos pero no para otros. Me parece todavía un proceso muy largo que hay que seguir para el respeto e el reconocimiento de nuestros derechos en igualdad de condiciones como ciudadanos del mundo.

Globality continues to be for some but not for all. Rights apply to some but not to all. It seems to me there's still a long way to go before our rights are recognised under equal conditions as citizens of the world.

The field of civil society-WTO interactions thus appears to function in ways which are consistent with critiques of 'global civil society' developed by scholars working within so-called 'post-colonial' perspectives. Pasha and Blaney, for example, have argued that:

Though TAL [transnational associational life] may be a site of possible challenges to the oligarchical organisation of contemporary global political

economy, it also appears as a basis for sustaining the dominance of a narrow band of humanity; to the extent that GCS represents an alternative vision, this might be seen, then, as equally hegemonic, enacting the “global” values of North American and European activists, in lieu of a genuinely deliberative process.

(1998: 419; see also Kamat 2004: 156)

The perspectives, values and worldviews that are accepted as legitimate and amplified through the discourses, governmental technologies and preferred forms of subjectivity in this field are predominantly Northern. As just discussed, the interventions that are most valued and welcomed are those that accept the model of private ownership and accumulation underpinning Western intellectual property regimes, and that work with individualist conceptions of knowledge and intellectual and creative endeavour. However, the hegemonic processes at work in the field of civil society-WTO interactions are not as straightforward as those suggested by Pasha and Blaney. What matters most is not geographical location but what we might term ‘cultural location’. Not all NGOs from Europe and North America work with culturally ‘Northern’ values and understandings; not all NGOs from other parts of the world enact alternative, critical or subaltern worldviews. NGOs in the South can and do also enact more ‘Northern’ values and subjectivities; indeed, one of the biggest tensions that can be observed within Peruvian ‘civil society’ is the ‘confrontación’ (confrontation), as one interviewee put it, between professionalised NGOs that enact more rationalist-individualistic and legalistic forms of subjectivity, on the one hand, and indigenous associations whose perspectives on knowledge and the natural world are rooted, self-consciously at times, in Andean cosmovision, on the other. The ‘narrow band of humanity’ (Pasha and Blaney 1998: 419) whose interests and perspectives might be seen to dominate the field of civil society-WTO interactions thus does not only include Europeans and North Americans, but also sections of ‘Southern’ civil society that espouse market principles and market-based approaches to governing traditional knowledge and biodiversity.

## Conclusion

In this chapter, I have analysed the ways in which the dominant discourses about ‘global civil society’ within the WTO, the technologies of government that work across the spaces of interaction between civil society and the WTO, and the preferred forms of subjectivity in these spaces combine to rarefy the subject matter, legitimate perspectives and knowing, speaking subjects in debates on TRIPS, traditional knowledge and biodiversity. I have argued that the field of civil society-WTO interactions has worked to narrow the subject matter of debates so as to render invisible topics such as whether patents on any form of life are ethical, the related question of whether Article 27.3(b) of the TRIPS Agreement should oblige WTO member states to provide

intellectual property protection to forms of life such as plant varieties, and strands of thinking and argument that invoke themes such as spirituality, alternative epistemologies, culture and identity, despite their importance to the communities whose so-called traditional knowledge is the subject of discussion. The types of perspectives that are welcomed in the field are those that are rooted in legalistic understandings of the issues, and accept trade liberalisation as the overarching framework of discussions, while interventions rooted in alternative epistemologies such as Andean cosmovision are not heard or recognised as legitimate. I have also argued that the perspectives, values and worldviews that are amplified through the discourses, governmental technologies and preferred forms of subjectivity in this field are predominantly Northern. In the next chapter, I explore some of the implications of these arguments, and draw some conclusions about the ways in which the field of civil society-WTO interactions is being governed.

# Conclusion

## Governing Global Civil Society

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In this concluding chapter, I explore some of the implications of the analysis and arguments developed throughout the thesis, and offer a series of reflections on the forms of restriction and control at work in the field of civil society-WTO interactions and in 'global civil society' more broadly. I comment, firstly, on the ways in which the possibilities of action of '(global) civil society' are being structured in the field of civil society-WTO interactions, and the forms of global governmentality that are thereby being enacted and promoted. I then focus on the role played by international Geneva-based NGOs in these governing processes, and suggest that these organisations play an important role in shaping and limiting the possibilities of participation of other parts of '(global) civil society' and in enabling and (re)producing particular forms and mentalities of governing. I conclude by considering the broader implications of this study for scholarly understanding of the role played by civil society in global governance, and suggest a number of avenues for future research based on the analysis and arguments developed throughout this thesis.

### Governing 'Global Civil Society'

The discourses, technologies of government and preferred forms of subjectivity in the field of civil society-WTO interactions, in shaping the possibilities of action of different kinds of civil society organisations and rarefying debates, work, I argue, to govern the sphere of activity conventionally referred to as 'global civil society' in particular ways. As discussed in Chapter Two, governing, in the perspective underpinning this study, is conceptualised as a set of processes that shape behaviours and subjectivities through

facilitating and constraining particular models of action. As Foucault put it, '[t]o govern ... is to structure the possible field of action of others' (1983: 221). The model of action facilitated and legitimated by the discourses, technologies of government and preferred forms of subjectivity already discussed is one which requires would-be participants in dialogue to establish a regular or permanent presence in Geneva, to participate in technical, legalistic discussions about WTO policy that build on rather than challenge the existing multilateral trade system, and to enact docile forms of subjectivity that respect the priorities and authority of national delegates. The 'global' subjectivity that is promoted is one which does not challenge the logics of trade liberalisation, private ownership and capitalist accumulation, accepts individualist models of knowledge-creation and protection, and is prepared to conceptualise debates around TRIPS, traditional knowledge and biodiversity as a technical and legal issue which can be resolved through applying appropriate legal expertise. Modes of relating and communicating that are more confrontational or more emotional, or that mobilise alternative conceptualisations of the issues at stake, are constrained and discouraged, and contributions that are rooted in alternative epistemologies such as Andean cosmovision or that question the desirability of ongoing commodification of knowledge and nature are rarefied out of debates. Models of action and subjectivities that do not conform to the docile, legalistic, market-based norm are, in other words, suppressed and excluded. Michael Merlingen has suggested that 'governance is not just about the production of discrimination. It is also (often) about the suppression of otherness as a condition for the realisation of the order(liness) imagined by authorities' (2006: 191). In the field of civil society-WTO interactions, what is being suppressed are non-market, non-legalistic and non-Western modes of being, intervening and conceptualising the issues at stake.

Michel Foucault argued that civil society is a 'necessary correlate of the state', a constructed object that enables, legitimises and calls for particular forms of government or rule (2009: 350). As Graham Burchell has put it, '[c]ivil society is not, Foucault says, a kind of aboriginal reality that finally we are forced to recognise; it is not a natural given standing in opposition to the timeless essential nature of the state ... It is, he says, the correlate of a political technology of government' (1991: 141). Scholars of 'global civil society' have taken up this understanding of civil society as a constructed object which can tell us something about global technologies of government, and have started to analyse and theorise the sort of global governance that is enabled and called for by particular constructions of '(global) civil society'. Jens Bartelson, for example, has argued that 'theories of global civil society are not to be understood primarily as theories *about* global governance at all, but rather as theories that help to justify a distinct set of practices and institutions of global governance' (2006: 386). Hakan Seckinelgin has suggested that 'the widely used language of civil society organisations is

more about the entrenchment of an international liberal agenda based on a particular form of life in market-economy social relations than about engaging with people's expressed concerns' (2002: 375). Following this line of theorising, the docile, legalistic, market-oriented 'global civil society' that is being called forward in the field of civil society-WTO interactions might be seen as a necessary correlate to a market-oriented, legalistic, expert-dominated global governance, which relies on 'participation' to justify and entrench its mentality and form of government. According to one of my interviewees in Peru:

- Yo creo que es bien importante en este escenario analizar cómo es que, y yo creo que esto explica la razón por la cual la Organización Mundial de Comercio prefiere algunas instituciones que no se oponen muy fuertemente a lo que plantea la OMC, y de otro lado se genera un proceso de exclusión. Pero la razón por la cual nosotros consideramos que los multilaterales han incorporado este tema de propiedad intelectual, biodiversidad y conocimientos tradicionales va más por el lado de justificar mecanismos que fortalezcan este enfoque de construcción de una sociedad de mercado, y no porque realmente estén muy preocupados en generar un proceso de diseño de políticas públicas globales en donde haya una gran participación.

I think it's very important in this case to analyse how, and I think this explains why the World Trade Organisation prefers certain institutions who don't strongly oppose what the WTO is suggesting, and why there's a process of exclusion. But we think the reason why the multilaterals have incorporated this theme of intellectual property, biodiversity and traditional knowledge is more about justifying mechanisms that strengthen this focus on constructing a market society and not because they're really worried about creating a process to devise global public policy with large-scale participation.

The logic of competition and preference for technical expertise in evidence in the field of civil society-WTO relations might thus be seen as a correlate of a broader mentality of government which favours and reproduces market logics and anaesthetises global struggles over knowledge and biodiversity by constructing them as technical problems with technical solutions.

In highlighting the ways in which the possibilities of action in the field of civil society-WTO interactions are structured and governed, the analysis developed in this thesis challenges many existing accounts of the relationship emerging between the WTO and NGOs. Although some scholars have identified restrictions and exclusions in the WTO's relations with civil society (e.g. Scholte 2004: 154-5; Williams 2005: 38), analysis of civil society-WTO relations has tended to focus on the enhanced transparency, accountability and democratic legitimacy that increased NGO involvement can bring (e.g. Charnovitz 2003; Dunoff 1998, 2003; Smythe and Smith 2006), and the 'new energy, ideas, and

values' that NGOs can inject into deliberation in the WTO (Charnovitz 2005: 442). The analysis developed in this thesis suggests that confidence in the ability of NGOs and other types of civil society organisation to inject 'new energy, ideas, and values' into WTO negotiations and contribute to more democratic global governance is misplaced. The ideas and values that are welcomed and accepted in the field of civil society-WTO interactions are those of a narrow sub-section of 'global civil society', i.e. professionalised, predominantly Western NGOs that work within a framework that accepts both trade liberalisation and a commodifying logic of private ownership of knowledge and elements of the natural world. The perspectives of indigenous communities and associations – those that might be considered most relevant if analysing global governance through the lens of democratic legitimacy and representativity – and other more critical elements of 'global civil society' are rarefied out of debates. The processes of governing identified in the field of civil society-relations work, in other words, to limit the ideas and values that are accepted from 'global civil society', with worrying implications for global democracy.

## Governing the Field of Civil Society-WTO Interactions: The Role of NGOs

Although the governing of 'global civil society' just discussed, like all forms of government, emerges through the interplay of a complex set of practices, discourses, calculations and habitual behaviour, it is worth highlighting the particular role played by some NGOs in these governing processes. The professionalised NGOs most involved in debates about TRIPS, traditional knowledge and biodiversity help enable, maintain and (re)produce, I suggest, some of the governmental logics and forms of control and restriction in evidence in the field of civil society-WTO interactions. They do this through enacting – and, indeed, helping create – the acceptable subject positions now preferred by trade officials, national delegates and WTO Secretariat staff, making decisions about who to invite to workshops and seminars with WTO representatives, and helping define the parameters and content of debates. They thus play an important role in enabling and (re)producing particular forms and mentalities of governing, and in shaping the possibilities of participation of other parts of '(global) civil society'.<sup>78</sup>

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<sup>78</sup> I am not the first to suggest that NGOs can play an important role in governing processes. Raymond Bryant, for example, has argued that 'a key outcome of NGO activity in the Philippines has been the facilitation of government in Foucault's sense of the term' (2002: 269). Ole Jacob Sending and Iver Neumann, focusing on a more global level, have predicted the emergence of 'new practices of government' wherein 'civil society organisations on the global level are harnessed to the tasks of governing' (2006: 656).

Some of the Geneva-based NGOs, for example, through organising regular meetings, seminars, workshops and side events for national delegates, WTO Secretariat staff and staff of other international organisations, play a significant role in helping define the parameters and content of debates in the field of civil society-WTO interactions, and in determining which members of '(global) civil society' are present. As discussed in Chapter Five, these events are often presented as opportunities for 'information-sharing' and 'brokering of knowledge', thus feeding into broader constructions of civil society organisations as providers of neutral, expert information and guidance. Emphasis is also placed, especially in the more closed and confidential NGO-organised meetings, on providing technical content and facilitating delegates' understanding of technical issues as requested by the delegates themselves. This type of focus helps reinforce the discourse of civil society as a contributor of technical expertise, prepared to work within the frameworks and priorities identified by national delegates, and thus contributes to and reinforces the rarefaction of the subject matter and perspectives on TRIPS, traditional knowledge and biodiversity that are present in the field of civil society-WTO interactions.

The Geneva NGOs also make decisions about which individuals and which organisations to invite to these events, and thereby regulate access to these spaces of civil society-WTO interaction based on the forms of subjectivity enacted. One former delegate, for example, talked about the spectrum of organisations that can be found in Geneva, and the distinctions that are frequently made between them. As he put it:

These NGOs that we interacted with when we wanted the professors to be flown in, I mean they were ideal material for bureaucrats, for negotiators. I mean they were sitting there, available, because they believed in the cause, and not necessarily making placards and banners. So that's ideal, from a negotiator's point of view. But then there are others that are at the other extreme, you know, the kinds who make T-shirts.

Delegates and NGOs that make up 'the Geneva community' all distinguish, he claimed, between these different types of organisations, so that NGOs, 'when organising an event, would use their discretion' about who to invite, 'based on their knowledge of what kind of NGOs they are, what kind of people they are, the ways in which they work'. An interviewee in one of the Geneva NGOs confirmed that these organisations are often reluctant to invite individuals who are not known and trusted to such events, 'because for the LDCs [least developed countries] and others, it's important that they know the people, because for them it would be difficult to place their confidence in someone that they don't really know, it's important to work with people they feel comfortable with'. This deference to national delegates' sensibilities may well be what has enabled these NGOs to build up a relationship of trust with representatives of the WTO and ensure



continued interaction with them, but it also has consequences for other sections of '(global) civil society'. Whether selection processes are based on expectations about delegates' preferences or other ideas about 'what kind of people' are desirable participants, NGO decisions about who to invite to the Geneva-based events serve to police and reinforce acceptable forms of subjectivity in the field of civil society-WTO interactions.

Numerous interviewees in Peru commented on what they perceived as a lack of openness and willingness or capacity to transmit the perspectives and concerns of many parts of Peruvian civil society on the part of professionalised NGOs in Geneva as well as in Lima. One interviewee, a journalist and consultant, when talking about the importance of Andean cosmovision to debates about intellectual property and traditional knowledge in Peru, remarked that '¿De qué manera la sociedad civil que representa a toda esta movilidad social lo traslada? No, no existen estos canales' (How does the civil society that represents all this movement transmit this topic? It doesn't, there aren't any channels that transmit it). Another interviewee, the director of a peasants' association, commented that 'yo creo que las organizaciones que ya están en Ginebra, son ellas las que necesitan cambiar. Ellas necesitan dar más apertura' (I think the organisations that are already in Geneva, they're the ones that need to change. They need to be more open). Another NGO programme director commented that 'creo que hay toda una discusión sobre cómo se entiende trabajo global, y yo creo que las organizaciones grandes allí no saben hacer trabajo global' (I think there's a whole discussion to be had about how to work globally, and I think that the big organisations there [in Geneva] don't know how to work globally).

These interviewees in Peruvian NGOs and other associations did recognise that the complexity of debates on intellectual property, traditional knowledge and biodiversity, and the diversity of perspectives and interests that are present around the world make it extremely difficult for professionalised NGOs to fully represent the views present within 'global civil society'. As the director of the peasants' association remarked:

Hay primeramente un punto que tiene que ver con la complejidad misma de las diferentes organizaciones y movimientos sociales que existen en el mundo. Sí hay temas comunes, como el ADPIC, y qué hacer con esto. Hay temas también que son más importantes que otros de acuerdo con el ecosistema en que vives. Para muchos países amazónicos la cuestión de semillas es muy diferente que para los centros de origen.

First of all it has to do with the very complexity of the different organisations and social movements that exist in the world. There are common themes, such as the TRIPS Agreement and what to do about it. There are also themes

that are more important than others depending on the ecosystem you live in. For many Amazonian countries the question of seeds is very different than for centres of origin.

However, interviewees' comments also suggested ways in which the subjectivities of those who work in the professionalised NGOs, both in Peru and in Geneva, might be contributing to particular kinds of filtering and rarefaction. One Lima-based NGO programme director commented, for example, that, 'el problema es que muchas ONGs, por su propia formación en las universidades y su propia experiencia, no los [los pueblos indígenas] quieren ver, entonces estamos en un proceso totalmente cerrado' (the problem is that many NGOs, because of the training they've had in university and their own experience, don't want to see them [the indigenous communities], so we're in a totally closed process). The director of a peasants' association remarked that:

Para mi mucho de ellas han sido cooptadas por el sistema mismo. Con excepciones, por ejemplo IPWatch, es más virtual, es muy pequeñito, me gusta mucho el trabajo que hacen ellos. Pero los otros dan el apoyo de la diplomacia de las Naciones Unidas, todos están en las reuniones, ya tienen el lenguaje mismo.

In my opinion many of them [the Geneva NGOs] have been coopted by the system. With exceptions, such as IPWatch, it's more virtual, it's very small, I like their work a lot. But the others support the diplomacy of the United Nations, they're all in the meetings, they already use that language.

He also suggested that many of the individuals working in these organisations have been seduced by the lifestyle and luxury that comes with being part of what we might call the Geneva 'trade community', to the extent that individuals have lost touch with what might be happening outside this relatively small community. As he put it, '¡a quien no le va a gustar eso! ... unas recepciones con embajadores tomando vino caro y champagne, entonces ya la gente se acostumbra' (who wouldn't enjoy it? All these receptions with ambassadors drinking expensive wine and champagne, people get used to it). The subjectivities enacted by staff in (some of) the professionalised NGOs in both Geneva and Peru, and what is perceived as a lack of communication with NGOs outside the small circle of legitimate interlocutors, thus feed into and reinforce the processes of rarefaction in the field of civil society-WTO interactions discussed in Chapter Seven. Individuals who approach debates about TRIPS, traditional knowledge and biodiversity from non-market, non-legalistic frameworks find it difficult to be recognised and treated as knowledgeable and relevant members of 'global civil society' by these more professionalised organisations, and the perspectives and concerns they wish to insert into global debates are overlooked and supplanted by more trade-friendly, legalistic and individualistic interventions.

Some NGO directors and researchers are, it should be noted, self-reflexive about the forms of restriction and control at work in the field of civil society-WTO interactions, and their own role in sustaining them. One Geneva-based NGO researcher commented, for example, that 'if someone who hasn't been based in Geneva came to do my job, they would most likely be quite pissed off with certain things. But there are things that you grow to accept through working here, things you accept because of the political dynamics, such as not pushing for WTO reform'. Another Geneva-based interviewee told me that conversations have been taking place amongst some of the Geneva NGOs about:

how many of the NGOs were very critical of the WTO and then all of a sudden we all look to the WTO as the sort of desirable benchmark, because the bilaterals are so much worse. And in a way how clever it is on behalf of those who wanted to liberalise more, to push the NGOs into that position. I suppose it's because maybe we accepted just too much. In French there's an expression, you allow your finger to go into the machinery and it takes your whole arm off.

Notwithstanding such misgivings, staff in the Geneva NGOs generally prefer, for the time being at least, to enjoy the benefits seen to accrue through interacting with representatives of the WTO. In enacting acceptable forms of subjectivity in the field and thereby helping rarefy debates on TRIPS, traditional knowledge and biodiversity, the Geneva-based NGOs might therefore be seen to have been effectively 'harnessed to the tasks of governing' (Sending and Neumann 2006: 656) the contours of debates and the possibilities of action of 'global civil society' in the field of civil society-WTO interactions, despite intentions to the contrary.

## Disaggregating and Decolonising 'Global Civil Society'

In exploring the processes of governing and rarefaction at work in the field of civil society-WTO interactions, and, in particular, the ways in which the activities of some professionalised NGOs feed into them, the analysis developed throughout this thesis highlights a number of important but still relatively under-examined themes and questions. The analysis developed points, firstly, to some of the tensions and struggles within the field of activity conventionally referred to as 'global civil society' over what constitutes legitimate knowledge of 'global' problems. In the case of debates about intellectual property, traditional knowledge and biodiversity, the main axis of tension relates to competing conceptualisations of knowledge, intellectual endeavour and what can be privately owned. On one side are professionalised NGOs and thinktanks that approach the issues through culturally Western, legalistic and market-oriented perspectives that divide knowledge and the natural world into discrete, commodified

units; on the other are rural development and indigenous associations that conceptualise knowledge and the natural world in more holistic ways, and challenge the notion of individual ownership of knowledge or nature. Struggles over knowledge and what constitutes legitimate 'global' knowledge thus appear as a key site of conflict within '(global) civil society', which warrant, this analysis suggests, further exploration and examination.

Connected to this, the analysis highlights some of the social processes and forms of restriction and control that lead to these more legalistic, market-oriented perspectives being amplified at the expense of more holistic, less individualistic approaches. I have argued that broader discourses about the role '(global) civil society' can and/or should play in global governance, along with ideas about what forms of civil society subjectivity are appropriate and desirable, contribute to a narrowing of legitimate perspectives and legitimate speaking subjects in this particular field of global governance. The analysis thus raises questions about whether other fields of global governance are permeated by the same discourses and logics, and whether the same forms of invisibility and silencing are produced when other institutions of global governance institute processes of dialogue with '(global) civil society'. It also prompts reflection on whether and how conventional academic modes of analysing and presenting civil society involvement in global governance feed into the forms of rationality and visibility identified in this field. Although practical, individually generated and accumulated knowledge, as discussed in Chapter Four, plays a relatively important role in shaping WTO representatives' responses to 'global civil society', these individuals also look to academic knowledge for guidance and understanding of 'global civil society'. Interviewees in the Secretariat, for example, reported 'read[ing] academic studies about civil society' to deepen their understanding of this sphere of activity, and often had copies of relevant academic texts on their bookshelves. A potentially fruitful area of further research therefore lies, I suggest, in examining and theorising the connections between the forms of knowledge mobilised and generated through scholarly enquiry and the forms of visibility that are produced in and through contemporary fields of global governance.

The analysis developed in this thesis points, thirdly, to some of what can be gained by researching the role of civil society in global governance using a multi-sited ethnographic approach. Researching across multiple geographical and social sites has made it possible to examine perspectives and knowledges which are invisibilised in much official (and scholarly) debate, and to develop an account of the processes of rarefaction through which these perspectives and knowledges are erased. The ethnographic sensibility adopted throughout the process of generating and analysing empirical data, and the sensitivity to diversity, complexity and the negotiation and

transmission of meaning systems this implies, has also facilitated an examination of some of the forms of silencing and misrecognition that operate in and through 'global civil society'. Carrying out more multi-sited research sensitive to the diversity and complexity of interests, perspectives and knowledges that are present in 'global civil society' might help subvert and break down the image of a homogenous, consensual and unproblematically 'global' civil society that, as discussed in Chapter One, emerges from much existing scholarship.

The analysis developed in this thesis suggests, in short, a need to better disaggregate 'global civil society' as an object of theorising and analysis, and, related to this, to decolonise both the theory and practice of 'global civil society'. In highlighting the struggles over what constitutes legitimate 'global' knowledge within 'global civil society' and the forms of rarefaction at work when this 'global civil society' interacts with an institution of global governance, this thesis illustrates some of what is masked if 'global civil society' is analysed at the aggregate level. In masking the struggles over what constitutes legitimate knowledge and the limits on participation in global governance, homogenising accounts of 'global civil society' contribute to the invisibilisation and erasure of these alternative knowledges, and the subsequent colonisation of this sphere of activity by culturally Northern knowledges and perspectives. Scholars of 'global civil society', as well as practitioners in this and other fields of global governance, would be well-advised to take the diversity and tensions within 'global civil society' more seriously. Better disaggregating the actors, interests and knowledges at play in this sphere would be an important step towards decolonising both the theory and practice of 'global civil society'.

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# Appendix 1

## List of Organisations

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I am grateful to individuals working in the following organisations for generously sharing their time, expertise, ideas and experiences throughout the course of this study. All interpretations of events, accounts and social processes presented in this thesis are my own, and do not necessarily reflect the positions of these organisations or the individuals interviewed.

**Acción Internacional por la Salud**

Lima, Peru

**Asociación Interétnica de Desarrollo de la Selva Peruana (AIDSEP) (Interethnic Association for the Development of the Peruvian Rainforest)**

Lima, Peru

**Asociación para la Naturaleza y el Desarrollo Sostenible (ANDES) (Association for Nature and Sustainable Development)**

Cusco, Peru

**Center for International Environmental Law (CIEL)**

Geneva, Switzerland

**Centro de Culturas Indígenas del Perú (CHIRAPAQ) (Centre for Peruvian Indigenous Cultures)**

Lima, Peru

**Centro de Investigación y Promoción Amazónica (CIPA) (Centre for Amazonian Research and Promotion)**

Lima, Peru

**Chuyma Aru,**

Puno, Peru

**Comisión Nacional contra la Biopiratería (National Commission Against Biopiracy)**

Lima, Peru

**Confederación Nacional de Comunidades del Perú Afectadas por la Minería (CONACAMI) (National Confederation of Peruvian Communities Affected by Mining)**

Lima, Peru

Consumer Unity and Trust Society (CUTS) Geneva Resource Centre  
Geneva, Switzerland

Derecho, Ambiente y Recursos Naturales (DAR) (Law, Environment and Natural Resources)  
Lima, Peru

DESCO, Centro de Estudios y Promoción del Desarrollo (Centre for the Study and Promotion of Development)  
Lima, Peru

European Commission Permanent Delegation to the International Organisations in Geneva  
Geneva, Switzerland

Institute for Agriculture and Trade Policy (IATP)  
Geneva, Switzerland

Instituto de Investigación de la Amazonía Peruana (IIAP) (Research Institute for the Peruvian Amazon)  
Iquitos, Peru

Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual (INDECOPI) (National Institute for the Defense of Competition and the Protection of Intellectual Property)  
Iquitos and Lima, Peru

Instituto Nacional de Desarrollo de los Pueblos Indígenas, Amazónicos y Afroperuano (INDEPA) (National Institute for the Development of the Indigenous, Amazonian and Afroperuvian Peoples)  
Lima, Peru

International Centre for Trade and Sustainable Development (ICTSD)  
Geneva, Switzerland

International Institute for Sustainable Development (IISD)  
Geneva, Switzerland

IQSensato  
Geneva, Switzerland

Ministerio de Comercio Exterior y Turismo (MINCETUR) (Ministry of Foreign Trade and Tourism)  
Lima, Peru



- Ministerio de Relaciones Exteriores (Ministry of Foreign Affairs)**  
Lima, Peru
- Organisation for an International Geographical Indications Network (OriGIN)**  
Geneva, Switzerland
- Organización de Pueblos Indígenas del Oriente (ORPIO) (Organisation for Indigenous Peoples of the East)**  
Iquitos, Peru
- Oxfam International**  
Geneva, Switzerland and Lima, Peru
- Paz y Esperanza (Peace and Hope)**  
Lima, Peru
- Permanent Mission of Brazil**  
Geneva, Switzerland
- Permanent Mission of India**  
Geneva, Switzerland
- Permanent Mission of Peru**  
Geneva, Switzerland
- Pro Biodiversidad de los Andes (PROBIOANDES) (Pro Biodiversity of the Andes)**  
Lima, Peru
- Proyecto Andino de Tecnologías Campesinas (PRATEC)**  
Lima, Peru
- Qolla Aymara**  
Puno, Peru
- Quaker United Nations Office (QUNO)**  
Geneva, Switzerland
- Red Peruana por una Globalización con Equidad (redGE) (Peruvian Network for Equitable Globalisation)**  
Lima, Peru
- Secretaría General de la Comunidad Andina (General Secretariat of the Andean Community)**  
Lima, Peru
- Sociedad Peruana de Derecho Ambiental**  
Iquitos and Lima, Peru

**The South Centre**

**Geneva, Switzerland**

**Third World Network**

**Geneva, Switzerland**

**3D Trade, Human Rights, Equitable Economy**

**Geneva, Switzerland**

**Universidad Nacional del Altiplano**

**Puno, Peru**

**World Intellectual Property Organisation**

**Geneva, Switzerland**

**World Trade Organisation**

**Geneva, Switzerland**

# Appendix 2

## List of Events Attended

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WTO Public Forum 2007

4 – 5 October 2007, Geneva, Switzerland

The Global IP Enforcement Debate: New Economic Perspectives and Policy Challenges

17 July 2008

WTO Public Forum 2008

24 – 25 September 2008, Geneva, Switzerland

Taller Internacional sobre la Implementación del Protocolo de Bioseguridad a Propósito de la Ordenanza Regional 010 – 2007 – CR/GRC.CUSCO y Taller de Biopiratería  
(International Workshop on the the Implementation of a Biosecurity Protocol in Relation to Regional Ordinance 010 – 2007 – CR/GRC.CUSCO and Workshop on Biopiracy)

21 – 23 April 2009, Cusco, Peru

IV Cumbre Continental de Pueblos y Nacionalidades Indígenas del Abya Yala (IV Continental Summit of Indigenous Peoples and Nationalities of Abya Yala)

29 – 31 May 2009, Puno, Peru

WTO Public Forum 2009

28 – 30 September 2009, Geneva, Switzerland

Geneva Trade and Development Symposium

30 November – 2 December 2009, Geneva, Switzerland

WTO Public Forum 2010

15 – 17 September 2010, Geneva, Switzerland